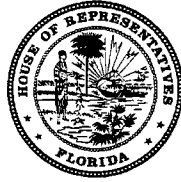




Committee on Utilities & Telecommunications

**Thursday, March 30, 2006
9:45 a.m. – 12:00 p.m.
404 HOB**



Florida House of Representatives

Commerce Council
Utilities & Telecommunications Committee

Kenneth W. "Ken" Littlefield
Committee Chairman

Bob "Coach" Henriquez
Committee Vice-Chairman



Agenda

Utilities and Telecommunications Committee
March 30, 2006 9:45 a.m. – 12:00 p.m. 404 HOB

- I. Welcome and Opening Remarks by the Chairman
- II. Roll Call
- III. PCB UT 06-01 Florida Public Service Commission Re-Write
- IV. HB 1339 – Communications Services Tax / Berfield
- V. HB 1471 – Florida Energy Diversity and Efficiency Act / Attkisson
- VI. HB 1199 – Statewide Cable Television Franchises / Traviesa
- VII. Closing Remarks by the Chairman
- VIII. Adjourn

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB UT 06-01 Florida Public Service Commission Re-Write
SPONSOR(S): Utilities & Telecommunications Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Utilities & Telecommunications Committee		Cater 	Holt 
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

In a recent operational audit of the PSC, the Auditor General reported that there were several obsolete provisions in ch. 350, F.S., which governs the Florida Public Service Commission. The Auditor General also reported that the regulator assessment fees rates in s. 350.113(3), F.S., are inconsistent with the rates used in industry specific statutes.

The bill deletes obsolete language contained in Chapter 350, F.S. relating to: 1) the regulation of railroads, 2) the position of chief auditor, 3) maximum regulatory assessment fees, 4) other obsolete administrative language, and 5) coal slurry pipelines.

The bill clarifies the beginning and ending dates of the term for newly appointed Commissioners.

The bill does not have a fiscal impact and shall take effect on July 1, 2006.

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government-The PCB removes obsolete statutory language relating to the Public Service Commission, and repeals its authority over coal slurry pipelines. It also deletes regulatory assessment fee rates in ch. 350, F.S., which are inconsistent with industry-specific statutes.

B. EFFECT OF PROPOSED CHANGES:

Background

In September, 2005, the Auditor General issued an operational audit report on the Florida Public Service Commission (Commission), report Number 2006-021, entitled Public Service Commission Regulatory Audits and Personnel Administration. One of the findings in this report was that some of the sections of Chapter 350, F.S., relating to the railroad industry, the position of chief internal auditor, and maximum regulatory assessment rates were no longer reflective of current Commission practices. Despite the fact that the Commission's jurisdiction over the railroad industry ended with the industry's deregulation in 1985, ss. 350.011, 350.113(3)(a), and 350.117(2), F.S., continue to include references or requirements applicable to the railroad industry. Additionally, s. 350.051, F.S., specifies the qualifications of the chief auditor and designates that the chief auditor is the director of the Commission's accounting department. The Commission's current organizational structure does not include an accounting department. The functions formerly performed by the Director of the Accounting Department are now performed by the Chief of the Bureau of Auditing and do not need statutory reference.

Finally, s. 350.113(3), F.S., sets out regulatory assessment fee maximums for the telecommunications, gas, and water and wastewater industries that are inconsistent with the assessment fee maximums specified in the industry-specific statutes (364.336, 366.14(2) and (3), and 367.145(1), F.S., respectively). The Auditor General's report recommended that these statutes be amended to eliminate outdated or inappropriate requirements and eliminate regulatory assessment fee maximums that are inconsistent with the more recent industry-specific statutes.

Proposed Changes

The bill makes the statutory changes recommended in the Auditor General's report. It corrects cross-references related to the appointment of Commissioners in s. 350.031, F.S.

Section 1

The bill amends provisions in s. 350.01, F.S., relating to appointment of Commissioners and hearing examiners. The bill clarifies that the term for a Public Service Commissioner begins on January 2nd of the year of appointment and ends on January 1st four years later. The bill deletes a reference to "the commission's office of hearing examiners" as the Commission no longer has such an office, but instead has staff attorneys who serve as hearing examiners.

Section 2

The bill amends s. 350.011, F.S., deleting references to the transition from the "Florida Railroad and Public Utilities Commission" to the "Florida Public Service Commission." The original title dates to the creation of the Chapter in 1897.

Section 3

The bill repeals s. 350.051, F.S., which designates the Commission's Chief Auditor as the director of the accounting department. The Commission no longer has this department.

Section 4

The bill amends s. 350.06, F.S., deleting obsolete provisions relating to the Commission's official reporters. These provisions contain an obsolete salary cap, conflicting provisions on fees for copies of transcripts, and requires a report that is not needed for internal fiscal controls. The bill also changes the Commission's fees for copying, certifying, or providing orders, transcripts and similar documents to the same fees that are allowed to be charged by the clerk of the circuit court. These fees are to be no more than those of the court clerk.

Section 5

The bill amends s. 350.113, F.S., to delete provisions for maximum regulatory assessment fees that conflict with the maximum set forth in the industry-specific statutes. This change was recommended as part of the Auditor General's Report.

Section 6

The bill amends s. 350.117, F.S., to delete a reference to regulation of railroads.

Section 7

The bill repeals s. 350.80, F.S., which provides for the Commission's regulation of coal slurry pipelines. No coal slurry pipeline has ever been proposed in Florida. According to the Commission, instead of using such pipelines to bring coal into Florida from coal producing states to generate electricity, two 500 KV electric transmission lines were constructed to bring in coal based electricity from Georgia under long term contracts. Additionally, a footnote to this statute states that "Section 5, ch. 79-236, provides that '[t]his act shall take effect when every state in which the coal slurry pipeline will pass en route to Florida has enacted laws granting eminent domain authority to coal slurry pipeline companies or other entities operating or proposing to operate a coal slurry pipeline, and when the appropriate governmental authority has guaranteed in writing to the Public Service Commission that a continuous source of water shall be available for use in said coal slurry pipeline.'" Georgia has never granted eminent domain authority, so this section never became effective.

Section 8

The bill amends s. 361.08, F.S., to delete subsection (d) on condemnation proceedings on coal slurry pipelines as contemplated in s. 350.80, F.S., which is to be repealed in Section 7 of the bill.

Section 9

This act shall take effect July 1, 2006.

C. SECTION DIRECTORY:

- | | |
|-----------|--|
| Section 1 | Amends s. 350.01, F.S., relating to the term of Florida Public Service Commissioners, and Commission proceedings. |
| Section 2 | Amends s. 350.011, F.S., relating to the jurisdiction, powers and duties of the Florida Public Service Commission |
| Section 3 | Repeals s. 350.051, F.S., relating to the Commission's chief auditor. |
| Section 4 | Amends s. 350.06, F.S., relating to the Commission's place of meeting; expenditures; employment of personnel; records availability and fees. |
| Section 5 | Amends s. 350.113, F.S., relating to the Florida Public Service Commission Regulatory Trust Fund. |
| Section 6 | Amends s. 350.117, F.S., to delete a reference to railroads. |
| Section 7 | Repeals s. 350.80, F.S., relating to the regulation of coal slurry pipelines. |
| Section 8 | Amends s. 361.08, F.S., to conform to the repeal of s. 350.80, F.S. |

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

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1 A bill to be entitled

2 An act relating to the Public Service Commission; amending

3 s. 350.01, F.S.; correcting cross-references; revising

4 provisions for terms of commissioners on the Public

5 Service Commission; revising a reference to the office of

6 hearing examiners; amending s. 350.011, F.S.; deleting

7 obsolete provisions relating to a transfer of certain

8 functions and duties to the Public Service Commission;

9 repealing s. 350.051, F.S., relating to qualifications of

10 the Chief Auditor of the commission; amending s. 350.06,

11 F.S.; deleting certain provisions relating to the

12 employment of reporters and furnishing of transcripts by

13 the commission; revising provisions for the collection and

14 accounting of fees for furnishing transcripts and other

15 documents or instruments; amending s. 350.113, F.S.;

16 removing limits on the amount of certain regulatory fees;

17 amending s. 350.117, F.S.; removing an exception for

18 railroads from certain audits by the commission; repealing

19 s. 350.80, F.S., relating to regulation of certain coal

20 slurry pipeline companies; amending s. 361.08, F.S.;

21 removing a provision for consideration by the court of

22 certain findings by the commission relating to coal slurry

23 pipeline companies, to conform to changes made by the act;

24 providing an effective date.

25

26 Be It Enacted by the Legislature of the State of Florida:

27

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Section 1. Paragraphs (a) and (b) of subsection (2) and subsection (5) of section 350.01, Florida Statutes, are amended to read:

350.01 Florida Public Service Commission; terms of commissioners; vacancies; election and duties of chair; quorum; proceedings.--

(2)(a) Each commissioner serving on July 1, 1978, shall be permitted to remain in office until the completion of his or her current term. Upon the expiration of the term, a successor shall be appointed in the manner prescribed by s. 350.031~~(5), (6), +3+~~ and (7) ~~(4)~~ for a 4-year term, except that the terms of the initial members appointed under this act shall be as follows:

1. The vacancy created by the present term ending in January, 1981, shall be filled by appointment for a 4-year term and for 4-year terms thereafter; and

2. The vacancies created by the two present terms ending in January, 1979, shall be filled by appointment for a 3-year term and for 4-year terms thereafter.

(b) Two additional commissioners shall be appointed in the manner prescribed by s. 350.031~~(5), (6), +3+~~ and (7) ~~(4)~~ for 4-year terms beginning the first Tuesday after the first Monday in January, 1979, and successors shall be appointed for 4-year terms thereafter with each term beginning on January 2 of the year the term commences and ending 4 years later on January 1.

(5) The primary duty of the chair is to serve as chief administrative officer of the commission; however, the chair may participate in any proceedings pending before the commission when administrative duties and time permit. In order to distribute the workload and expedite the commission's calendar, the chair, in

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addition to other administrative duties, has authority to assign the various proceedings pending before the commission requiring hearings to two or more commissioners or to the commission's staff ~~office~~ of hearing examiners under the supervision of the office of general counsel. Only those commissioners assigned to a proceeding requiring hearings are entitled to participate in the final decision of the commission as to that proceeding; provided, if only two commissioners are assigned to a proceeding requiring hearings and cannot agree on a final decision, the chair shall cast the deciding vote for final disposition of the proceeding. If more than two commissioners are assigned to any proceeding, a majority of the members assigned shall constitute a quorum and a majority vote of the members assigned shall be essential to final commission disposition of those proceedings requiring actual participation by the commissioners. If a commissioner becomes unavailable after assignment to a particular proceeding, the chair shall assign a substitute commissioner. In those proceedings assigned to a hearing examiner, following the conclusion of the hearings, the designated hearing examiner is responsible for preparing recommendations for final disposition by a majority vote of the commission. A petition for reconsideration shall be voted upon by those commissioners participating in the final disposition of the proceeding.

Section 2. Section 350.011, Florida Statutes, is amended to read:

350.011 Florida Public Service Commission; jurisdiction; powers and duties.--The state regulatory agency heretofore known as the Florida Railroad and Public Utilities Commission or Florida Public Utilities Commission shall be known and hereafter

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YEAR

86 called Florida Public Service Commission, and all rights, powers,
 87 duties, responsibilities, jurisdiction, and judicial powers now
 88 vested in said Railroad and Public Utilities Commission or said
 89 Florida Public Utilities Commission and the commissioners thereof
 90 are vested in the Florida Public Service Commission and the
 91 commissioners thereof. ~~Whenever reference is made to the Florida~~
 92 ~~Railroad and Public Utilities Commission or Florida Public~~
 93 ~~Utilities Commission and the commissioners thereof in the laws of~~
 94 ~~the state previously enacted or enacted at this session of the~~
 95 ~~Legislature, such reference shall be construed to mean the~~
 96 ~~Florida Public Service Commission and the commissioners thereof~~
 97 ~~and all appropriations for the use of said Railroad and Public~~
 98 ~~Utilities Commission or Florida Public Utilities Commission and~~
 99 ~~the members thereof for the biennium or continuing in nature~~
 100 ~~previously made or made at this session of the Legislature, shall~~
 101 ~~be construed to be for the use of said Florida Public Service~~
 102 ~~Commission and the commissioners thereof, to be used for the~~
 103 ~~purposes set out in the laws making said appropriations;~~
 104 ~~provided, however, the change in name of said regulatory agency~~
 105 ~~shall in nowise affect any pending causes and proceedings,~~
 106 ~~existing notices, orders, certificates, permits, licenses, or~~
 107 ~~authorities previously granted or any action previously taken by~~
 108 ~~the Florida Railroad and Public Utilities Commission or Florida~~
 109 ~~Public Utilities Commission.~~

110 Section 3. Section 350.051, Florida Statutes, is repealed.

111 Section 4. Subsections (3) through (9) of section 350.06,
 112 Florida Statutes, are amended to read:

113 350.06 Place of meeting; expenditures; employment of
 114 personnel; records availability and fees.--

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115 (3) The commissioners may employ clerical, technical, and
116 professional personnel reasonably necessary for the performance
117 of their duties and. ~~The commissioners~~ may also employ one or
118 more persons capable of stenographic court reporting, to be known
119 as the official reporters of the commission, ~~and fix the~~
120 ~~compensation of each not to exceed \$28,000 annually. The official~~
121 ~~reporters shall furnish only to the commission transcripts of all~~
122 ~~testimony taken by them, and the commission may make and sell~~
123 ~~certified copies of such testimony and charge therefor the same~~
124 ~~fees as are allowed clerks of the circuit courts of the state,~~
125 ~~subject to such rules and regulations as may be prescribed by the~~
126 ~~commission.~~

127 (4) When needed, the commission may engage supplementary
128 qualified reporters at their usual rate of compensation; however,
129 the supplementary reporters shall furnish the commission the
130 original certified transcripts of testimony taken by them, ~~but~~
131 ~~such reporters shall have the right to sell copies of such~~
132 ~~transcripts subject to rules and regulations of the commission.~~
133 ~~The commission may make copies of the transcripts for internal~~
134 ~~use without further compensation. When supplementary reporters~~
135 ~~are unable to provide copies within a reasonable time, the~~
136 ~~commission may, upon request, sell copies at its usual rate and~~
137 ~~shall deposit the proceeds in the Public Service Regulatory Trust~~
138 ~~Fund.~~

139 ~~(5) Upon request by the governing body of a municipal or~~
140 ~~county government within 7 days after completion of the~~
141 ~~transcript and its delivery to the commission, the commission~~
142 ~~shall provide copies of the transcripts of testimony at the cost~~

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~~of reproduction and mailing, but such copies need not be
certified unless specifically requested.~~

~~(5)(6)~~ The commission shall make available to the public
counsel the original copy of all transcripts for use and study in
the commission offices. If the commission makes any copies of
transcripts for internal use and if the public counsel has so
requested in writing to the clerk of the commission ~~at the time~~
~~of his or her intervention~~, the commission shall supply the
public counsel with a copy of the transcript at no charge. ~~In all~~
~~other cases, the public counsel may obtain a copy of the~~
~~transcript from the commission for the cost of reproduction.~~

~~(6)(7)~~ The commission shall collect for copying, examining,
comparing, correcting, verifying, certifying, or furnishing
orders, records, transcripts of testimony, papers, or other
instruments no more than the same fees that are allowed clerks of
the circuit courts of this state ~~Florida~~. In cases where the fee
would amount to less than \$1, no fee shall be charged.

~~(7)(8)~~ Copies of commission orders furnished to public
officials, newspapers, periodical publications, federal agencies,
state officials of other states, and parties to the proceeding in
which the order was entered and their attorneys shall be without
charge. However, the commission may in its discretion charge fees
for the furnishing of more than one copy of any order to any of
the foregoing.

~~(8)(9)~~ The commission shall keep accounting records ~~a book~~
in which all fees collected by it as provided for herein shall be
recorded, together with the amount and purpose for which
collected. The accounting records ~~This book~~ shall be a public
records ~~record~~. ~~The commission shall prepare a statement of these~~

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YEAR

172 ~~fees in duplicate each month and remit one copy of the statement,~~
 173 ~~together with all fees collected by it, to the Chief Financial~~
 174 ~~Officer.~~ All moneys collected pursuant to this section by the
 175 commission shall be deposited in the State Treasury to the credit
 176 of the Florida Public Service Regulatory Trust Fund.

177 Section 5. Subsection (3) of section 350.113, Florida
 178 Statutes, is amended to read:

179 350.113 Florida Public Service Regulatory Trust Fund;
 180 moneys to be deposited therein.--

181 (3) Each regulated company under the jurisdiction of the
 182 commission, which company was in operation for the preceding 6-
 183 month period, shall pay to the commission within 30 days
 184 following the end of each 6-month period, commencing June 30,
 185 1977, a fee based upon the gross operating revenues for such
 186 period ~~subject to the limitations of this subsection.~~ The fee
 187 ~~fees~~ shall, to the extent practicable, be related to the cost of
 188 regulating such type of regulated company. ~~and shall in no event~~
 189 ~~be greater than:~~

190 ~~(a) For each railroad operating under chapter 351, one~~
 191 ~~eighth of 1 percent of its gross operating revenues derived from~~
 192 ~~intrastate business.~~

193 ~~(b) For each telephone company licensed or operating under~~
 194 ~~chapter 364, one eighth of 1 percent of its gross operating~~
 195 ~~revenues derived from intrastate business.~~

196 ~~(c) For each "public utility" as defined in s. 366.02, one~~
 197 ~~eighth of 1 percent of its gross operating revenues derived from~~
 198 ~~intrastate business, excluding sales for resale between public~~
 199 ~~utilities, municipal electric utilities, and rural electric~~
 200 ~~cooperatives, or any combination thereof.~~

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201 ~~(d) For each municipal electric utility and rural electric~~
 202 ~~cooperative, one sixty fourth of 1 percent of its gross operating~~
 203 ~~revenues derived from intrastate business, excluding sales for~~
 204 ~~resale between public utilities, municipal electric utilities,~~
 205 ~~and rural electric cooperatives, or any combination thereof.~~

206 ~~(e) For each regulated company licensed under chapter 367,~~
 207 ~~2.5 percent of its gross revenues derived from intrastate~~
 208 ~~business.~~

209
 210 Differences, if any, between the amount paid in any 6-month
 211 period and the amount actually determined by the commission to be
 212 due shall, upon notification by the commission, be immediately
 213 paid or refunded. Each regulated company which is subject to the
 214 jurisdiction of the commission, but which did not operate under
 215 the commission's jurisdiction during the entire preceding 6-month
 216 period, shall, within 30 days after the close of the first 6-
 217 month period during which it commenced operations under, or
 218 became subject to, the jurisdiction of the commission, pay to the
 219 commission the prescribed fee based upon its gross operating
 220 revenues derived from intrastate business during those months or
 221 parts of months in which the regulated company did operate during
 222 such 6-month period. In no event shall payments under this
 223 section be less than \$25 annually.

224 Section 6. Subsection (2) of section 350.117, Florida
 225 Statutes, is amended to read:

226 350.117 Reports; audits.--

227 (2) The commission may perform management and operation
 228 audits of any regulated company ~~except railroads~~. The commission
 229 may consider the results of such audits in establishing rates;

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YEAR

230 | however, the company shall not be denied due process as a result
231 | of the use of any such management or operation audit.

232 | Section 7. Section 350.80, Florida Statutes, is repealed.

233 | Section 8. Paragraph (d) of subsection (2) of section
234 | 361.08, Florida Statutes, is amended to read:

235 | 361.08 Right of eminent domain to coal pipeline
236 | companies.--

237 | (2) Any corporation, partnership, joint venture,
238 | association, or other legal entity organized under the laws of
239 | this state, or under the laws of any other state and qualified to
240 | do business in this state, for the purpose of supplying any
241 | electric utility or utilities; any city, town, or village or the
242 | inhabitants thereof; or any community with coal or its
243 | derivatives and any mixture and combination thereof by pipeline,
244 | and for the purpose of serving as a common carrier operating or
245 | proposing to operate a pipeline or pipelines for transporting or
246 | delivering coal or its derivatives or any mixture or combination
247 | thereof, shall have the right of eminent domain, for the purpose
248 | of acquiring title, easements, rights-of-way, or other rights or
249 | interests in property, necessary to acquire and take private
250 | property which is or may be needed for the construction,
251 | operation, maintenance, repair, or replacement of coal slurry and
252 | derivative plants, pipelines, pumping stations, and any other
253 | installations and works incident thereto. The procedure to
254 | condemn property or interest therein shall be exercised in the
255 | manner set forth in chapters 73 and 74. In any condemnation
256 | proceeding under this act, the circuit court shall restrict the
257 | exercise of the right of eminent domain in the following
258 | particulars:

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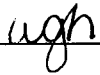
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259 ~~(d) The court, in any condemnation proceeding brought~~
 260 ~~pursuant to this section, shall be bound by the findings of the~~
 261 ~~Florida Public Service Commission on the general issues of~~
 262 ~~economic and environmental feasibility as determined pursuant to~~
 263 ~~s. 350.80.~~

264 Section 9. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1339 Communications Services Tax
SPONSOR(S): Berfield and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 2008

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Utilities & Telecommunications Committee		Cater 	Holt 
2) Finance & Tax Committee			
3) Commerce Council			
4) _____			
5) _____			

SUMMARY ANALYSIS

The bill reduces the Communications Services Tax (CST) rates, for most communications services. They gradually reduced from their current rate of 6.8 percent to 3.63 percent. For direct-to-home satellite systems, the CST will be gradually reduced from its current rate of 10.8 percent to 7.63 percent. The tax reduction begins on October 1, 2006 for bills rendered on or after that date, and the reductions are as follows:

- October 1, 2006 through September 30, 2007: A reduction of 1.17 percent.
- October 1, 2007 through September 30, 3008: A reduction of 1 percent.
- October 1, 2008: The final reduction of 1 percent.

For fiscal year 2006 -2007, there is an estimated negative fiscal impact of \$108.65 million to state government and a \$4.03 million fiscal impact on local government. Once the tax reductions go completely into effect, for fiscal year 2009-2010, there is an estimated negative fiscal impact of \$463.55 million on state government and a \$22.4 million fiscal impact on local governments.

This act shall take effect October 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure Lower Taxes-The bill gradually reduces the Communications Services Tax from its current rate of 6.8 percent to 3.63 percent on October 1, 2008. For direct-to-home satellite services, the reduction is from its current rate of 10.8 percent to 7.63 percent on October 1, 2008.

B. EFFECT OF PROPOSED CHANGES:

Background

In 2000 and 2001 the Legislature passed the "Communications Services Tax (CST) Simplification Law"¹ and was codified in ch. 202, F.S. This was designed to restructure taxes on telecommunications, cable, direct-to-home satellite, and related services.² The CST replaces and consolidates several different state and local taxes with a single tax comprised of two parts: the Florida CST and the local CST.

Old Tax Structure (Prior to October 1, 2001)	New Tax Structure (After October 1, 2001)
Number of Taxes = 7 State Sales Tax Local Option Tax Gross Receipts Tax Public Service Tax Cable Franchise Fee Telecom Franchise Fee Cable and Telecom Permit Fees	Number of Taxes = 2 State Communications Services Tax Local Communications Services Tax

Services subject to this tax include telecommunications, cable, direct-to-home satellite, and related services. This definition encompasses voice, data, audio, video, or any other information or signals, including cable services that are transmitted by any medium.

Some examples of services subject to the tax are:

- Local, long distance, and toll telephone
- Cable television
- Direct-to-home satellite
- Mobile communications, including detailed billing charges
- Private line services
- Pager and beeper
- Telephone charges made by a hotel or motel
- Facsimiles (FAX), when not provided in the course of professional or advertising service
- Telex, telegram, and teletype

¹ Ch. 2000-260 and 2001-140, L.O.F.

² Much of the general information related to the CST is from the Florida Department of Revenue's website on the CST. Florida Department of Revenue <http://www.myflorida.com/dor/taxes/GT-800011.html#comservicetax>

In general, the tax includes a state rate of 6.8 percent plus a gross receipts tax rate of 2.37 percent, for a combined state communications services tax rate of 9.17 percent. However, residential telephone service is only subject to the 2.37 percent gross receipts tax. Each local taxing jurisdiction may levy its own local tax rate on communications services of up to six percent, however these percentages may be higher due to emergency rates and permit fees.

Direct-to-home satellite services are taxed at a 10.8 percent state tax rate and gross receipts tax of 2.37 percent for a total rate of 13.17 percent. This is due to federal law prohibiting the local taxation of direct to home satellite service.

In addition, counties may assess an E911 fee of up to 50 cents per month for telecommunications service.³ For landline telephones, there is a surcharge on customer bills for telephone relay service for the hard of hearing. This charge is capped at 25 cents per access line.⁴ According to the Public Service Commission, the current surcharge is 15 cents per access line.

In state fiscal year 2004-2005, the state collected \$2.21 billion in CST. The breakdown of the receipts is as follows:

- Sales Tax: \$868.3 million (39.2 percent)
- Local Tax: \$816.4 million (36.9 percent)
- Gross Receipts Tax: \$382.5 million (17.3 percent)
- Satellite Tax: \$143.5 million (6.5 percent)

The breakdown of the tax distribution is as follows:

- Local Government: \$947.6 million (43.1 percent)
- General Revenue: \$838.4 million (38.1 percent)
- Public Education Capital Outlay: \$406.5 million (18.5 percent)
- Other: \$5.8 million (0.3 percent)⁵

According to the Tax Foundation⁶, in 2004, Florida had an effective state telecommunications tax rate of 9.76 percent. This was the 10th highest in the United States. If you add an effective local communications tax rate of 8.39 percent, Florida has a combined state and local effective telecommunications tax rate of 18.15 percent. This rate is 14th highest in the country.

It should also be noted that according to the tax foundation, Florida ranks 44th nationally in its state and local tax burden. For 1994, this burden was estimated at 9.4 percent of income, compared to 10.2 percent nationally. Florida does not have a state income tax and its 5.5 percent corporate income tax is 6th lowest of the states that collect corporate income tax. However, the state's six percent sales tax is higher than the national median of five percent, and its 2004 collection of state sales tax was 3rd highest nationally. The state also has the 42nd highest gas tax and 43rd highest cigarette tax. State property taxes rank 24th highest nationally.

Proposed Changes

Section 202.11(2), F.S., defines "communications services" rather broadly to encompass existing technologies and ones that may later be devised. It includes services such as cable television, local and long distance telephone service, wireless telephone service, paging service, and satellite television service.

³ S. 365.171(8), F.S.

⁴ S. 427.704, F.S.

⁵ Florida Department of Revenue presentation to the Florida House of Representatives Utilities & Telecommunications Committee, October 18, 2005.

⁶ Information from the Tax Foundation may be found at: <http://www.taxfoundation.org/>

The bill amends s. 202.12(a), F.S., to remove the general CST tax rates of 6.8 percent, and the 10.8 percent CST rate for direct-to-home satellite service.

The bill creates s. 202.12(1)(e), F.S., to provide that the state CST imposed on communications services that originate and/or terminate in Florida are at the following rates:

- 6.8 percent for bills rendered on or after October 1, 2001 through September 30, 2006;
- 5.63 percent for bill rendered on or after October 1, 2006 through September 30, 2007;
- 4.63 percent for bills rendered on or after October 1, 2007 through September 30, 2008;
- 3.63 percent for bill rendered on or after October 1, 2008.

As of October 1, 2008, the state CST of 3.63 percent and the 2.37 percent gross receipts tax on communications services will equal the 6 percent state sales tax.

The bill creates s. 202.12(1)(f), F.S., to provide that the CST imposed on direct-to-home satellite services received in Florida are at the following rates:

- 10.8 percent for bills rendered on or after October 1, 2001 through September 30, 2006;
- 9.63 percent for bill rendered on or after October 1, 2006 through September 30, 2007;
- 8.63 percent for bills rendered on or after October 1, 2007 through September 30, 2008;
- 7.63 percent for bill rendered on or after October 1, 2008.

This act shall take effect on October 1, 2006.

C. SECTION DIRECTORY:

Section 1 Amends s. 202.12(1), F.S., relating to the sales of communications services.

Section 2 This act shall take effect October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

On March 7, 2006, the Revenue Estimating Conference issued an estimate of the revenue impact. The reduction in state revenues, in millions, is as follows:

	2006-2007	2007-2008	2008-2009	2009-2010	2010-2011	Total
Communications Services Tax	\$101.8	\$239.3	\$369.7	\$425.4	\$438.5	\$1,574.7
Direct-to-Home Satellite	\$6.85	\$18.16	\$31.5	\$38.5	\$41.09	\$135.4
Total	\$108.65	\$257.46	\$400.85	\$463.55	\$479.59	\$1,710.1

2. Expenditures:

The Department of Revenue will incur some expenditure in notifying communications services dealers of the annual change in the CST.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Since under federal law, direct-to-home satellite service cannot be subject to local taxation, thirty-seven percent of the state CST on direct-to-home satellite service is distributed to counties. The estimated total reduction in revenue to the counties, in millions, as a result in the change in CST is as follows:

2006-2007	2007-2008	2008-2009	2009-2010	2010-2011	Total
\$4.03	\$10.66	\$28.31	\$22.4	\$24.13	\$89.53

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Consumers will see a reduction in the CST paid. Communications services dealers will incur some administrative costs associated with implementing the bill provisions.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not contain an unfunded mandate to municipalities or counties. While counties will see a reduction in state tax revenue, the bill does not reduce the percent of tax shared with local government.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to DOR, the bill specifies that the applicable rates apply to "bills rendered on. . . ." The use of the term "rendered" might cause confusion in determining whether the intent is to include bill dated, mailed, or received on the effective date. Specifying that the decrease in tax rates applies to "bills dated on or after . . ." will eliminate confusion regarding what charges are subject to the decrease in tax rate.

Also, according to DOR, Florida law currently provides a January 1 effective date for certain CST rate changes.⁷ DOR is required to notify communications services dealers who are required to implement the rate changes. Using a January 1 effective date for rate changes will reduce the administrative costs for communications services dealers and for the DOR.

⁷ S. 202.21, F.S.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

HB 1339

2006

A bill to be entitled

An act relating to the communications services tax;
amending s. 202.12, F.S.; revising the percentage rate of
the tax that is applied to the sales price of certain
communications services; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 202.12, Florida
Statutes, is amended to read:

202.12 Sales of communications services.--The Legislature
finds that every person who engages in the business of selling
communications services at retail in this state is exercising a
taxable privilege. It is the intent of the Legislature that the
tax imposed by chapter 203 be administered as provided in this
chapter.

(1) For the exercise of such privilege, a tax is levied on
each taxable transaction, and the tax is due and payable as
follows:

(a) Except as otherwise provided in this subsection, at
the a rate set forth in paragraph (e) of 6.8 percent applied to
the sales price of the communications service which:

1. Originates and terminates in this state; or
2. Originates or terminates in this state and is charged
to a service address in this state,

when sold at retail, computed on each taxable sale for the
purpose of remitting the tax due. The gross receipts tax imposed

HB 1339

2006

29 by chapter 203 shall be collected on the same taxable
30 transactions and remitted with the tax imposed by this
31 paragraph. If no tax is imposed by this paragraph by reason of
32 s. 202.125(1), the tax imposed by chapter 203 shall nevertheless
33 be collected and remitted in the manner and at the time
34 prescribed for tax collections and remittances under this
35 chapter.

36 (b) At the rate set forth in paragraph (f) ~~of 10.8 percent~~
37 on the retail sales price of any direct-to-home satellite
38 service received in this state. The proceeds of the tax imposed
39 under this paragraph shall be accounted for and distributed in
40 accordance with s. 202.18(2). The gross receipts tax imposed by
41 chapter 203 shall be collected on the same taxable transactions
42 and remitted with the tax imposed by this paragraph.

43 (c) At the rate set forth in paragraph (e) ~~(a)~~ on the
44 sales price of private communications services provided within
45 this state, which shall be determined in accordance with the
46 following provisions:

47 1. Any charge with respect to a channel termination point
48 located within this state;

49 2. Any charge for the use of a channel between two channel
50 termination points located in this state; and

51 3. Where channel termination points are located both
52 within and outside of this state:

53 a. If any segment between two such channel termination
54 points is separately billed, 50 percent of such charge; and

55 b. If any segment of the circuit is not separately billed,
56 an amount equal to the total charge for such circuit multiplied

HB 1339

2006

by a fraction, the numerator of which is the number of channel termination points within this state and the denominator of which is the total number of channel termination points of the circuit.

The gross receipts tax imposed by chapter 203 shall be collected on the same taxable transactions and remitted with the tax imposed by this paragraph.

(d) At the rate set forth in paragraph (e) ~~(a)~~ applied to the sales price of all mobile communications services deemed to be provided to a customer by a home service provider pursuant to s. 117(a) of the Mobile Telecommunications Sourcing Act, Pub. L. No. 106-252, if such customer's service address is located within this state.

(e) The rate imposed in paragraphs (a), (c), and (d) shall be as follows:

1. For bills rendered on or after October 1, 2001, through September 30, 2006, 6.8 percent.

2. For bills rendered on or after October 1, 2006, through September 30, 2007, 5.63 percent.

3. For bills rendered on or after October 1, 2007, through September 30, 2008, 4.63 percent.

4. For bills rendered on or after October 1, 2008, 3.63 percent.

(f) The rate imposed in paragraph (b) shall be as follows:

1. For bills rendered on or after October 1, 2001, through September 30, 2006, 10.8 percent.

HB 1339

2006

84 2. For bills rendered on or after October 1, 2006, through
 85 September 30, 2007, 9.63 percent.

86 3. For bills rendered on or after October 1, 2007, through
 87 September 30, 2008, 8.63 percent.

88 4. For bills rendered on or after October 1, 2008, 7.63
 89 percent.

90 Section 2. This act shall take effect October 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. 1339

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Council/Committee hearing bill: Utilities & Telecommunications
Committee

Representative(s) Berfield offered the following:

Amendment (with directory and title amendments)

Remove line(s) 71 through 89 and insert:

(e) The rate imposed in paragraphs (a), (c), and (d) shall
be as follows:

1. For bills dated on or after October 1, 2001, through
December 31, 2006, 6.8 percent;

2. For bills dated on or after January 1, 2007, through
December 31, 2007, 5.63 percent;

3. For bills dated on or after January 1, 2008, through
December 31, 2008, 4.63 percent; and

4. For bills dated on or after January 1, 2009, 3.63
percent.

(f) The rate imposed in paragraph (b) shall be as follows:

1. For bills dated on or after October 1, 2001, through
December 31, 2006, 10.8 percent;

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

21 2. For bills dated on or after January 1, 2007, through
22 December 31, 2007, 9.63 percent;

23 3. For bills dated on or after January 1, 2008, through
24 December 31, 2008, 8.63 percent; and

25 4. For bills dated on or after January 1, 2009, 7.63
26 percent.
27

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1471
SPONSOR(S): Attkisson
TIED BILLS:

Florida Energy Diversity and Efficiency Act

IDEN./SIM. BILLS: SB 2494

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Utilities & Telecommunications Committee		Holt <i>ugh</i>	Holt <i>ugh</i>
2) Fiscal Council			
3) Commerce Council			
4) _____			
5) _____			

SUMMARY ANALYSIS

HB1471 creates the "Florida Energy Diversity and Efficiency Act," to govern the siting of new nuclear power plants. The Act is modeled after the existing Power Plant Siting Act, Chapter 403.509, F.S.

The bill streamlines the siting process while ensuring public input. The legislation also allows the Governor and Cabinet, sitting as the Siting Board, to assess the need and approve/deny the plant.

The bill consolidates all issues into one hearing before an Administrative Law Judge (local land use hearing is consolidated into ALJ hearing)

The definitions for "associated facilities" and "associated transmission lines," are broadened to create a single forum for "one-stop" permitting of all transmission issues. The bill also defines the scope of intervention in transmission line siting procedures in an effort to eliminate unnecessary delays.

Public Service Commission's (PSC) need determination is also included in the bill, and the bill imposes a 135-day schedule on the PSC for issuing a need order. Issues are defined that the PSC can address in the need proceeding and requires the PSC to grant the utility's petition upon a finding that the plant will (1) provide needed baseload capacity; (2) enhance the reliability of production in the state by improving fuel diversity and lessening reliance on natural gas and oil; (3) mitigate air emissions and; (4) provide the most cost-effective – though not necessarily the least-cost –generating alternative. Further, the bill excludes nuclear plants from the PSC bid rule.

Other provisions provide that once a need petition is granted, costs incurred shall not be subject to challenge unless and only to the extent the PSC finds, based on clear and convincing evidence offered at a hearing initiated by the PSC, that the utility was imprudent in incurring costs significantly in excess of the initial, non-binding estimate provided by the utility.

The fiscal impact is unknown at this time.

The bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Maintain Public Security: Through the further diversification of the State fuel supply, the siting of new nuclear generation may lessen the dependence on any one particular fuel, in order to ensure power reliability.

B. EFFECT OF PROPOSED CHANGES:

Background

Department of Environmental Protection

Certification of nuclear fueled, steam turbine, electric power generation facilities is presently done under the authority of the Electrical Power Plant Siting Act (PPSA), ss. 403.501-403.518 and ss. 403.519, F.S. The PPSA is a centralized, coordinated licensing process. This process preempts all state, regional, and local permits and other authorizations that have jurisdiction for regulation and siting of industrial facilities. All affected agencies participate as parties to the process and all non-procedural requirements of the preempted agencies are included in the certification as conditions of certification.

The PPSA is highly procedural and includes a determination of need by the Public Service Commission (PSC) ss. 403.519, F.S., a mandatory land use hearing and a mandatory certification hearing by an administrative law judge, with ultimate approval/denial authority vested in the Siting Board (Governor and Cabinet). The DEP coordinates the process.

An administrative law judge is involved from the beginning, and the process is handled as litigation and requires the exchange of most documents as legal filings. Persons wishing to become formally involved in the process, for the most part, must become parties to the proceeding. Additional opportunities exist for public comment.

Public Service Commission

A precedent condition for a electrical project to proceed under the PPSA (s. 403.508(3)) is an affirmative determination of plant need from the PSC. In implementing the requirements of s. 403.508(3), the PSC has established rules controlling the information to be included in a petition for need and the schedule of administrative events in order to meet the requirements of the PPSA. Section 403.519, F.S., requires the PSC, in considering whether to approve a need petition, to take into account several criteria. These criteria include the need for electric system reliability and integrity; the need for adequate electricity at a reasonable cost; whether the proposed plant is the most cost-effective alternative available; available conservation measures which mitigate the need for the plant; and other matters within the PSC's jurisdiction.

In determining whether the proposed plant is the most cost-effective alternative, the PSC established Rule 25-22.082, F.A.C. Selection of Generating Capacity. This rule requires utilities to request bids for alternatives to its proposed plant in order to meet the identified need for power. The effect of the rule is to provide the PSC with more complete information about potential alternatives to the proposed power plant to use as a consideration in its deliberation of the project's cost-effectiveness.

Federal Legislation

The Energy Policy Act of 2005 provides significant financial incentives that may inure to the benefit of Florida consumers. These incentives, however, are limited to the first 6,000 megawatts of new nuclear plants constructed. To date, utilities in a number of other states have announced their intent to build new nuclear plants.

EFFECT OF PROPOSED CHANGES

Section 1. The act may be cited as the Florida Energy Diversity and Efficiency Act.

Section 2. The bill provides legislative intent declaring that it is in the public interest and critical to the health, prosperity, and general welfare of the state and its citizens to promote the expansion of nuclear generation by the siting of new nuclear power plants and associated facilities within the state.

Section 3. Definitions: The bill provides definitions as used in this act. The definitions are adapted largely from those used in the PPSA, with exceptions for using the term "nuclear" in lieu of "electric." Noteworthy, however, are the following definitions which are expanded from the PPSA for use in the act:

(4) "Applicant" means any electric utility as defined under s. 366.8255(1)(a)¹, Florida Statutes, city, town, county, public utility district, electric cooperative, or joint operating agency, or combination thereof, authorized under Florida law to engage in the business of generating, transmitting, or distributing electric energy to retail electric customers in the state.

The regulatory approval of a nuclear plant in the bill only applies to retail serving utilities as defined in s. 366.8255(10)(a). This allows for the inclusion of municipal and rural electric utilities. Historically, no individual Florida municipal or rural electric cooperative has sought to construct a nuclear unit. However, joint ownership arrangements could exist, and these entities as a result could have ownership shares of future nuclear plants.

(21) "Nuclear power plant" means, for the purpose of certification, any electrical generating facility using any process involving nuclear materials, fuels, or processes and, at the applicant's election, includes associated facilities and associated transmission lines.

The definition includes, at the applicant's option, associated transmission lines which encompass not only lines and substations directly interconnected to nuclear plants, but any transmission upgrades or expansions on the state's transmission system. As a result, any grid-wide upgrades required to reliably handle the electric output of the proposed nuclear plant would be considered as part of the licensing process required under this act.

Three concerns were raised in this regard to the definition: 1) definition goes beyond the current definition of associated facilities contained in the PPSA. 2) references to the notice provisions and request for hearings use the term "nuclear power plant" and make no mention of "associated facilities. 3) in order for the Siting Board to comprehensively balance the cost and benefits of a new nuclear power plant, all directly associated facilities should be included in the application and evaluated by the reporting agencies, and should not be at the applicant's option.

The bill deletes the definitions used in PPSA for "person" and "sufficiency."

Section 4. Department of Environmental Protection; powers and duties enumerated: Powers are designated to the DEP to adopt rules to implement the act provisions and conduct various studies. However, the concern was raised the bill provides DEP with no authority to issue final orders if not hearing is requested.

Section 5. Applicability and certification: Provisions provide that the act applies exclusively to any new nuclear power plant and to any expansion in steam-generation capacity of any existing nuclear power plant. Any new construction and capacity expansion occurring after the effective date of this requires certification under this act. The bill provides an exemption from modification of certification for

¹ (1) As used in this section, the term:

(a) "Electric utility" or "utility" means any investor-owned electric utility that owns, maintains, or operates an electric generation, transmission, or distribution system within the State of Florida and that is regulated under this chapter.

1 A bill to be entitled
2 An act relating to the "Florida Energy Diversity and
3 Efficiency Act"; providing a short title; providing
4 legislative intent; providing definitions; providing
5 requirements for the authorization, certification, and
6 siting of nuclear power plants; providing for a Nuclear
7 Power Plant Siting Board; enumerating the related powers
8 and duties of the Department of Environmental Protection,
9 including rulemaking authority; requiring certain
10 application, certification, and licensure of nuclear power
11 plants; specifying applicability to certain nuclear power
12 plants; providing for distribution of certain applications
13 and schedules; directing the Division of Administrative
14 Hearings to appoint an administrative judge to conduct
15 certain hearings; providing for the determination of
16 application and amendment completeness; requiring affected
17 agencies to submit certain reports; providing requirements
18 and procedures with respect thereto; requiring public
19 notice of department recommendation and petition for
20 certification hearings; providing for certification
21 proceedings; providing requirements and procedures with
22 respect thereto; authorizing the board to have final
23 disposition on certification applications; providing that
24 this act supersedes certain laws and regulations;
25 providing for effect of certification; requiring certain
26 public notice; providing responsibility for certain costs;
27 providing for revocation or suspension of certification;
28 providing for appeal and review of proceedings under the

29 act; providing for compliance enforcement; requiring the
30 department to make information available to the public;
31 providing requirements and procedures for modification of
32 certification; providing for supplemental applications for
33 sites certified for ultimate site capacity; requiring
34 certain fees; providing for deposit into the Florida
35 Permit Fee Trust Fund and for subsequent distribution;
36 requiring the Public Service Commission to hold hearings
37 on determination of need; providing requirements and
38 procedures with respect thereto; providing an effective
39 date.

40
41 WHEREAS, the extraordinary and unprecedented global
42 increases in the cost of fuel oil and natural gas, coupled with
43 the state's rapidly growing population and increasing demands
44 for electric energy, have brought into sharp focus the need to
45 enhance fuel diversity, and

46 WHEREAS, the world growth in demand for fuel oil and
47 natural gas may continue to have further impact on the cost and
48 supply of these resources, and

49 WHEREAS, the impact of Hurricane Katrina on supplies of
50 natural gas and fuel oil further substantiates the need to alter
51 the balance of fuel diversity in connection with the generation
52 of electricity in the state, and

53 WHEREAS, the federal Energy Policy Act of 2005 encourages
54 the siting and operation of new nuclear generation by providing
55 tax and other incentives to reduce the costs of such plants, and

HB 1471

2006

WHEREAS, significant federally funded benefits and incentives available under the federal Energy Policy Act of 2005 are available to only the first 6,000 megawatts of new advanced nuclear reactor generating capacity licensed in the United States, and

WHEREAS, operation of new nuclear power generation within the state, particularly if such generation is eligible for the tax and other incentives available under the federal Energy Policy Act of 2005, will benefit the state's electric customers, and

WHEREAS, existing provisions of the Florida Electrical Power Plant Siting Act are inadequate to address the unique issues of siting nuclear power generation within the state and securing benefits under the federal Energy Policy Act of 2005, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. Short title.--This act may be cited as the "Florida Energy Diversity and Efficiency Act."

Section 2. Legislative intent.--The Legislature finds that the state, its residents, and its economy benefit from diverse sources of fuel for the generation of electricity. Diversity of fuel sources contributes to lower cost electricity and improved reliability of electric supply, as the state will not be dependent upon a particular source of fuel. Nuclear power plants are important sources of electric generation that contribute to the diversity of fuel sources within the state. The state has

84 five operating nuclear power plants that have operated reliably
85 for the benefit of the state, and contributed a stable supply of
86 electricity, with minimal impacts on the state's environment.
87 The citizens of the state and electric power consumers have
88 benefited from the operation of existing nuclear power plants
89 within the state through low-cost and reliable energy
90 production, electric grid reliability, and economic and
91 environmental benefits. The Legislature further finds and
92 declares it is in the public interest and critical to the
93 health, prosperity, and general welfare of the state and its
94 citizens to promote the expansion of nuclear generation by the
95 siting of new nuclear power plants within the state so as to
96 continue these benefits and further ensure the state's access to
97 safe, reliable, efficient, and affordable electric service,
98 thereby enhancing the state's economic future while protecting
99 the environment. Recent events have shown the state's
100 vulnerability to disruptions and price volatility in its
101 electric supplies from the importation of natural gas and fuel
102 oil from domestic and foreign sources. The federal Energy Policy
103 Act of 2005 contains important provisions to promote the
104 construction and operation of new nuclear power plants in the
105 United States, including financial incentives for qualifying
106 advanced nuclear power plants and incentives that are limited to
107 the first 6,000 megawatts of advanced nuclear power plant
108 generating capacity licensed in the United States. The state
109 would benefit from timely siting of a qualifying advanced
110 nuclear power plant as a source of low-cost electricity. In
111 consideration of the present and predicted growth in electric

112 power needs in this state, and the potential for additional
113 reliable sources of electricity from nuclear power plants, the
114 Legislature finds that there is a need to develop a procedure
115 for the selection and utilization of sites for electrical
116 generating facilities utilizing nuclear energy and for the
117 identification of a state position with respect to each proposed
118 site and nuclear power plant. The Legislature recognizes that
119 the selection of sites for new or expanded nuclear-powered
120 electrical generating plants, including any associated linear
121 facilities, will have a significant impact upon the welfare of
122 the population, the location and growth of industry, and the use
123 of the natural resources of the state. The Legislature finds
124 that the efficiency of the permit application and review process
125 at both the state and local level would be improved with the
126 implementation of a process in which a permit application for
127 nuclear power plants would be centrally coordinated and all
128 permit decisions could be reviewed on the basis of adopted
129 standards and recommendations of the deciding agencies. A
130 centrally coordinated permitting process would also enhance the
131 state's ability to become the location of a qualifying advanced
132 nuclear power plant. Nuclear power plants may also be the
133 location of or otherwise promote other public benefits for water
134 supply projects, industrial development, or other activities.
135 Legislation that addresses issues unique to the siting of
136 nuclear power plants is required to encourage electric utilities
137 to site and operate new nuclear power plant facilities within
138 the state and to take advantage of provisions of the federal
139 Energy Policy Act of 2005 that operate to reduce the overall

HB 1471

2006

costs of such plants. It is the Legislature's intent that the
state shall promote and approve new nuclear-powered electrical
generating facilities that will reasonably balance the
increasing demands for reliable, cost-effective electric power
and decisions about electrical power plant location,
construction, and operation with the broad interests of the
public.

Section 3. Definitions.--As used in this act:

(1) "Act" means the Florida Energy Diversity and
Efficiency Act.

(2) "Agency," as the context requires, means an official,
officer, commission, authority, council, committee, department,
division, bureau, board, section, or other unit or entity of
government, including a regional or local governmental entity.

(3) "Amendment" means a change in the information provided
by the applicant to the application for certification made after
the initial application filing.

(4) "Applicant" means any electric utility as defined
under s. 366.8255(1)(a), Florida Statutes, city, town, county,
public utility district, electric cooperative, or joint
operating agency, or combination thereof, authorized under
Florida law to engage in the business of generating,
transmitting, or distributing electric energy to retail electric
customers in the state.

(5) "Application" means the documents required by the
department to be filed to initiate a certification proceeding
and shall include the documents necessary for the department to

HB 1471

2006

render a decision on any permit required pursuant to any
federally delegated or approved permit program.

(6) "Associated facility" means any facility that directly
supports the construction and operation of the nuclear power
plant, including, but not limited to, any substation,
transmission line that connects the electrical power plant to an
electrical transmission network, and right-of-way to which the
applicant intends to connect.

(7) "Associated transmission line" means any new or
upgraded transmission line that connects the electrical power
plant to a electrical transmission network or right-of-way to
which the applicant intends to connect, including, at the
applicant's option, any proposed terminal or intermediate
substation, substation expansion connected to the associated
transmission line to be certified, or new transmission line or
upgrade or improvement of an existing transmission line on any
portion of the state's electrical transmission system necessary
to support the generation injected into the system from the
proposed nuclear power plant.

(8) "Board" means the Governor and Cabinet sitting as the
Nuclear Power Plant Siting Board.

(9) "Certification" means the written order of the board
approving an application in whole or with such changes or
conditions as the board may deem appropriate.

(10) "Completeness" means that the application has
addressed all applicable sections of the prescribed application
format and that those sections are sufficient in
comprehensiveness of data or in quality of information provided

195 to allow the department to determine whether the application
196 provides the reviewing agencies adequate information to prepare
197 the reports required by this act.

198 (11) "Corridor" means the proposed area within which an
199 associated linear facility right-of-way is to be located. The
200 width of the corridor proposed for certification as an
201 associated facility, at the option of the applicant, may be the
202 width of the right-of-way or a wider boundary, not to exceed a
203 width of 1 mile, within which the right-of-way will be located.
204 The area within the corridor in which a right-of-way may be
205 located may be further restricted by a condition of
206 certification. After all property interests required for the
207 right-of-way have been acquired by the applicant, the boundaries
208 of the area certified shall narrow to only that land within the
209 boundaries of the right-of-way.

210 (12) "Department" means the Department of Environmental
211 Protection.

212 (13) "Designated administrative law judge" means the
213 administrative law judge assigned by the Division of
214 Administrative Hearings pursuant to chapter 120, Florida
215 Statutes, to conduct the hearings required by this act.

216 (14) "Federally delegated or approved permit program"
217 means any environmental regulatory program approved by an agency
218 of the Federal Government so as to authorize the department to
219 administer and issue licenses pursuant to federal law,
220 including, but not limited to, new source review permits,
221 operation permits for major sources of air pollution, and
222 prevention of significant deterioration permits under the Clean

HB 1471

2006

223 Air Act (42 U.S.C. ss. 7401 et seq.), permits under ss. 402 and
 224 404 of the Clean Water Act (33 U.S.C. ss. 1251 et seq.), and
 225 permits under the Resource Conservation and Recovery Act (42
 226 U.S.C. ss. 6901 et seq.).

227 (15) "License" means a franchise, permit, certification,
 228 registration, charter, comprehensive plan amendment, development
 229 order, or permit as defined in chapters 163 and 380, Florida
 230 Statutes, or similar form of authorization required by law,
 231 including permits issued under federally delegated or approved
 232 permit programs, but it does not include a license required
 233 primarily for revenue purposes when issuance of the license is a
 234 ministerial act.

235 (16) "Local government" means a municipality or county in
 236 the jurisdiction of which the nuclear power generating facility
 237 is proposed to be located, unless the term is expressly stated
 238 to also include the local governments in the jurisdiction of
 239 which associated facilities or associated transmission lines are
 240 located.

241 (17) "Modification" means any change in the certification
 242 order after issuance, including a change in the conditions of
 243 certification.

244 (18) "Nonprocedural requirements of agencies" means any
 245 agency's regulatory requirements established by statute, rule,
 246 ordinance, or comprehensive plan, excluding any provisions
 247 prescribing forms, fees, procedures, or time limits for the
 248 review or processing of information submitted to demonstrate
 249 compliance with such regulatory requirements.

HB 1471

2006

250 (19) "Notice of intent" means that notice which is filed
251 with the department on behalf of an applicant prior to
252 submission of an application pursuant to this act and which
253 notifies the department of an intent to file an application.

254 (20) "Nuclear power generating facility" means the
255 nuclear-fueled electrical generating facility within a nuclear
256 power plant but, for purposes of this act, excludes any
257 associated facility or associated transmission line.

258 (21) "Nuclear power plant" means, for the purpose of
259 certification, any electrical generating facility using any
260 process involving nuclear materials, fuels, or processes and, at
261 the applicant's election, includes associated facilities and
262 associated transmission lines.

263 (22) "Preliminary statement of issues" means a listing and
264 explanation of those issues within the agency's jurisdiction
265 which are of major concern to the agency in relation to the
266 proposed nuclear power plant.

267 (23) "Public Service Commission" or "commission" means the
268 agency created pursuant to chapter 350, Florida Statutes.

269 (24) "Regional planning council" means a regional planning
270 council as defined in s. 186.503(4), Florida Statutes, in the
271 jurisdiction of which the nuclear power generating facility is
272 proposed to be located.

273 (25) "Right-of-way" means land necessary for the
274 construction and maintenance of an associated linear facility,
275 such as a railroad line, pipeline, or transmission line,
276 including associated facilities and associated transmission
277 lines. The typical width of the right-of-way shall be identified

HB 1471

2006

in the application. The right-of-way shall be located within the certified corridor and shall be identified by the applicant subsequent to certification in documents filed with the department prior to construction.

(26) "Site" means any proposed location wherein a nuclear power generating facility, or a nuclear power generating facility alteration or addition resulting in an increase in generating capacity, will be located within state jurisdiction. The site may include appropriate buffers and may accommodate facilities constructed by the applicant or an agency to further an objective of an adopted water management district water supply plan. For purposes of this act, the term "site" does not include any associated facilities or associated transmission lines.

(27) "Site certification" means the final order issued by the board approving with any conditions or modifications a proposed nuclear power plant.

(28) "State comprehensive plan" means that plan set forth in chapter 187, Florida Statutes.

(29) "Water management district" means a water management district, created pursuant to chapter 373, Florida Statutes, in the jurisdiction of which the nuclear power plant is proposed to be located.

Section 4. Department of Environmental Protection; powers and duties enumerated.--The department shall have the following powers and duties in relation to this act:

(1) To adopt rules pursuant to ss. 120.536(1) and 120.54, Florida Statutes, to implement the provisions of this act.

HB 1471

2006

306 (2) To prescribe the form and content of the public
307 notices and the notice of intent and the form, content, and
308 necessary supporting documentation and studies to be prepared by
309 the applicant for nuclear power plant site certification
310 applications. The department shall utilize any existing site
311 certification application forms and instructions adopted
312 pursuant to the Florida Electrical Power Plant Siting Act, ss.
313 403.501-403.518, Florida Statutes, until such new forms are
314 adopted by the department.

315 (3) To receive applications for nuclear power plant site
316 certifications and to determine the completeness thereof.

317 (4) To make, or contract for, studies of nuclear power
318 plant site certification applications.

319 (5) To administer the processing of applications for
320 nuclear power plant site certifications and to ensure that the
321 applications are processed as expeditiously as possible.

322 (6) To require such fees as allowed by this act.

323 (7) To conduct studies and prepare a written analysis.

324 (8) To prescribe the means for monitoring continued
325 compliance with terms of the certification.

326 (9) To notify all affected agencies of the filing of a
327 notice of intent within 15 days after receipt of the notice.

328 (10) To issue, with the nuclear power plant certification,
329 any license required pursuant to any federally delegated or
330 approved permit program.

331 Section 5. Applicability and certification.--

332 (1) The provisions of this act shall apply exclusively to
333 any nuclear power plant as defined in this act and to any

HB 1471

2006

expansion in steam-generating capacity of any existing nuclear power plant. No construction of any new nuclear power plant or expansion in steam-generating capacity of any existing nuclear power plant may be undertaken after the effective date of this act without first obtaining certification as provided in this act. Except as otherwise provided in this subsection, this act shall not apply to any such nuclear power plant that is presently operating or that has, upon the effective date of this act, applied for a permit or certification under requirements in force prior to the effective date of such act.

(2) Except as provided in the certification, modification of nuclear fuels, internal-related hardware, or operating conditions not in conflict with certification, which increase the electrical output of a unit to no greater capacity than the maximum operating capacity of the existing electrical generator, shall not constitute an alteration or addition to generating capacity which requires certification pursuant to this act.

(3) The application for any related department license which is required pursuant to any federally delegated or approved permit program shall be processed within the time periods allowed by this act, in lieu of those specified in s. 120.60, Florida Statutes.

Section 6. Distribution of application; schedules.--

(1) Within 7 days after the filing of an application, the department shall provide to the applicant and the Division of Administrative Hearings the names and addresses of those affected or other agencies entitled to notice and copies of the application and any amendments.

HB 1471

2006

(2) Within 7 days after the filing of an application, the department shall prepare a schedule of dates for submission of statements of issues, determination of completeness, and submittal of final reports from affected and other agencies, petition for a certification hearing, and other significant dates to be followed during the certification process, including dates for filing notices of appearance to be a party pursuant to section 11(2)(c). The schedule shall establish the date for conduct of any certification hearing as provided for in this act. This schedule shall be timely provided by the department to the applicant, the administrative law judge, all agencies identified pursuant to subsection (1), and all parties.

(3) Within 7 days after the department issues the names and addresses of those affected or other agencies entitled to notice and copies of the application and any amendments, the applicant shall distribute copies of the application to all agencies identified by the department. Copies of changes and amendments to the application shall be timely distributed by the applicant to all affected agencies and parties.

Section 7. Appointment of administrative law judge.--Within 7 days after receipt of an application, the department shall request the Division of Administrative Hearings to designate an administrative law judge to conduct the hearings required by this act. The division director shall designate an administrative law judge within 7 days after receipt of the request from the department.

Section 8. Determination of completeness.--

HB 1471

2006

389 (1) Within 45 days after the distribution of the
390 application or amendment to a pending application, the
391 department shall file a statement with the Division of
392 Administrative Hearings and with the applicant declaring its
393 position with regard to the completeness of the application or
394 amendment. The department's statement shall be based upon
395 consultation with the affected agencies, which shall submit to
396 the department recommendations on the completeness of the
397 application within 30 days after distribution of the
398 application.

399 (2) If the department declares the application or
400 amendment incomplete, the applicant may withdraw the application
401 or amendment. If the applicant declines to withdraw the
402 application or amendment, the applicant may, at its option:

403 (a) Within 40 days after the department filed its
404 statement of incompleteness or such later date as authorized by
405 department rules, file additional information necessary to make
406 the application or amendment complete. If the applicant makes
407 its application or amendment complete within this time period,
408 the time schedules under this act shall not be tolled by the
409 department's statement of incompleteness.

410 (b) Advise the department and the administrative law judge
411 that the information necessary to make the application or
412 amendment complete cannot be supplied within the time period
413 authorized in paragraph (a). The time schedules under this act
414 shall be tolled from the date of the notice of incompleteness
415 until the application or amendment is determined complete.

HB 1471

2006

416 (c) Contest the statement of incompleteness by filing a
 417 request for a hearing with the administrative law judge within
 418 15 days after the filing of the statement of incompleteness. If
 419 a hearing is requested by the applicant, all time schedules
 420 under this act shall be tolled as of the department's statement
 421 of incompleteness, pending the administrative law judge's
 422 decision concerning the dispute. A hearing shall be held no
 423 later than 21 days after the filing of the statement by the
 424 department, and a final decision shall be rendered by the
 425 administrative law judge within 10 days after the hearing.

426 (3)(a) If the administrative law judge determines,
 427 contrary to the department, that an application or amendment is
 428 complete, all time schedules under this act shall resume as of
 429 the date of the administrative law judge's determination.

430 (b) If the administrative law judge agrees that the
 431 application is incomplete, all time schedules under this act
 432 shall remain tolled until the applicant files additional
 433 information and the application or amendment is determined
 434 complete by the department or the administrative law judge.

435 (4) If, within 30 days after receipt of the additional
 436 information submitted pursuant to paragraph (2)(a), paragraph
 437 (2)(b), or paragraph (3)(b), based upon the recommendations of
 438 the affected agencies, the department determines that the
 439 additional information supplied by an applicant does not render
 440 the application or amendment complete, the applicant may
 441 exercise any of the options specified in subsection (2) as often
 442 as may be necessary to resolve the dispute.

HB 1471

2006

443 Section 9. Preliminary statements of issues, reports, and
444 studies.--

445 (1) Each affected agency identified in paragraph (2) (a)
446 shall submit a preliminary statement of issues to the department
447 and the applicant no later than 45 days after the distribution
448 of the application. The failure to raise an issue in this
449 statement shall not preclude the issue from being raised in the
450 agency's report.

451 (2) (a) The following agencies shall prepare reports as
452 provided below and shall submit them to the department and the
453 applicant within 60 days after the application is determined
454 complete:

455 1. The Department of Community Affairs shall prepare a
456 report containing recommendations which address the impact upon
457 the public of the proposed nuclear power plant, based on the
458 degree to which the nuclear power plant is consistent with the
459 applicable portions of the state comprehensive plan and other
460 such matters within its jurisdiction.

461 2. The Public Service Commission shall prepare a report as
462 to the present and future need for the electrical generating
463 capacity to be supplied by the proposed nuclear power plant. The
464 report shall include the commission's determination pursuant to
465 section 24(4) and may include the commission's comments with
466 respect to any other matters within its jurisdiction.

467 3. The water management district shall prepare a report as
468 to matters within its regulatory jurisdiction.

469 4. Each local government in whose jurisdiction the
470 proposed nuclear power plant, including associated facilities

HB 1471

2006

471 and associated transmission lines, is to be located shall
472 prepare a report as to the consistency of the proposed nuclear
473 power plant with all applicable local ordinances, regulations,
474 standards, or criteria that apply to the proposed nuclear power
475 plant, including adopted local comprehensive plans, land
476 development regulations, and any applicable local environmental
477 regulations adopted pursuant to s. 403.182, Florida Statutes, or
478 by other means. Each local government in which the nuclear power
479 generating facility is to be located shall also report on
480 whether the proposed site for a nuclear power generating
481 facility is located in a future land use category and a zoning
482 district, as adopted by the local government and which were in
483 effect on the date upon which the application was filed, which
484 permits the location of a nuclear power generating facility. If
485 the proposed site for a nuclear power generating facility is not
486 located in a future land use category or zoning district which
487 allows such a use, then the local government shall identify the
488 future land use category or zoning district which would be
489 required to allow the proposed nuclear power generating facility
490 on the proposed site. If the proposed site for a nuclear power
491 generating facility is not located in a future land use category
492 or zoning district which allows such a use, the local government
493 shall identify in its report any reasonable and available
494 methods which the local government believes are necessary to
495 make the proposed use of the site for a nuclear power generating
496 facility consistent with the local comprehensive plan future
497 land use category, in compliance with the local zoning code or

HB 1471

2006

498 compatible with the existing land uses surrounding the proposed
499 nuclear power generating facility site.

500 5. The Fish and Wildlife Conservation Commission shall
501 prepare a report as to matters within its jurisdiction.

502 6. The regional planning council shall prepare a report
503 containing recommendations that address the impact upon the
504 public of the proposed nuclear power plant, as identified under
505 the applicable provisions of the strategic regional policy plan
506 adopted pursuant to chapter 186, Florida Statutes.

507 7. The Department of Health shall prepare a report as to
508 matters within its jurisdiction.

509 8. The Department of Transportation shall prepare a report
510 as to the impact of the proposed nuclear power plant and
511 associated linear facilities on roads, railroads, airports,
512 aeronautics, seaports, and other matters within its
513 jurisdiction.

514 9. Any other agency, if requested by the department and
515 upon approval of the assigned administrative law judge, shall
516 also perform studies or prepare reports as to matters within
517 that agency's jurisdiction which may be directly affected by the
518 proposed nuclear power plant.

519 (b) Each report described in this subsection shall contain
520 all information on variances, exemptions, exceptions, or other
521 relief which may be required and any proposed conditions of
522 certification on matters within the jurisdiction of such agency.
523 For each condition proposed by an agency in its report, the
524 agency shall list the specific statute, rule, or ordinance which
525 authorizes the proposed condition. No condition of certification

HB 1471

2006

526 may be imposed upon a nuclear power plant project that is not
527 directly required to ensure compliance with a specific statute,
528 rule, or ordinance of an agency or the criteria set forth in
529 this act.

530 (c) The agencies shall initiate the activities required by
531 this section no later than 30 days after the complete
532 application is distributed.

533 (3) The department shall prepare a written analysis, which
534 shall be filed with the designated administrative law judge and
535 served on all parties no later than 85 days after the
536 application is found complete, but no later than 60 days prior
537 to the scheduled date for the certification hearing if a
538 petition for hearing were to be filed, and which shall include:

539 (a) A statement indicating whether the proposed nuclear
540 power plant and proposed ultimate site capacity will be in
541 compliance with the rules of the department and in compliance
542 with a specific statute, rule, or ordinance of an agency
543 identified in that agency's report.

544 (b) Copies of the studies and reports required by this
545 act.

546 (c) The comments received by the department from any other
547 agency or person.

548 (d) The recommendation of the department as to the
549 disposition of the application, of variances, exemptions,
550 exceptions, or other relief identified by any party, and of any
551 proposed conditions of certification which the department
552 believes should be imposed, including any conditions proposed by

553 an agency which the department believes should be imposed in any
554 final certification.

555 (e) The recommendation of the department regarding the
556 issuance of any license required pursuant to a federally
557 delegated or approved permit program.

558 (4) Except when good cause is shown, the failure of any
559 agency to submit a preliminary statement of issues or a report,
560 or to submit its preliminary statement of issues or report
561 within the allowed time, shall not be grounds for the alteration
562 of any time limitation in this act. Neither the failure to
563 submit a preliminary statement of issues or a report nor the
564 inadequacy of the preliminary statement of issues or report
565 shall be grounds to deny or condition certification.

566 Section 10. Notice of department recommendation, petition
567 for certification hearing.--

568 (1) The department and the applicant shall publish a
569 public notice as provided for in this section, announcing the
570 issuance of the department's recommendation on the application
571 for site certification. The notice shall be published in the
572 newspaper or newspapers in the jurisdictions where the proposed
573 nuclear power plant and any associated facility are proposed to
574 be located. The notice shall inform the public of the issuance
575 of the department's report, the conclusion reached in that
576 report, and the locations where the department's report and the
577 application are available for public inspection.

578 (2) Within 14 days after its receipt of the department's
579 recommendation or within 14 days after the newspaper notice of
580 the department's recommendation, whichever occurs first, any

HB 1471

2006

party or any person whose substantial interests may be affected
by the proposed nuclear power plant may file with the department
a petition for a site certification hearing. The petition shall
identify the person filing the petition, identify the
substantial interests alleged to be affected, and identify with
specificity those issues which the person alleges require the
conduct of a certification hearing on the proposed nuclear power
plant.

(3) Failure to timely file a petition for a certification
hearing shall result in the department's recommendation becoming
final and no longer subject to challenge or reversal in any
proceeding, including, before the board. Only those conditions
contained in the department's recommendation may be imposed upon
the proposed nuclear power plant.

Section 11. Certification proceedings, parties,
participants.--

(1) If any party or person whose substantial interests are
affected files a petition for a certification hearing within 14
days after publication of notice of the department's notice of
its recommendation on the application for site certification, a
certification hearing shall be held by the designated
administrative law judge no later than 260 days from the date
the application is filed with the department. However, an
affirmative determination of need by the Public Service
Commission pursuant to this act shall be a condition precedent
to the conduct of the certification hearing. If a timely
petition for a certification hearing is filed, the certification
hearing shall be held at a location in proximity to the proposed

609 site. The certification hearing shall also constitute the sole
610 hearing allowed by chapter 120, Florida Statutes, to determine
611 the substantial interest of a party regarding any required
612 agency license or any related permit required pursuant to any
613 federally delegated or approved permit program. At the
614 conclusion of the certification hearing, the designated
615 administrative law judge shall, after consideration of all
616 evidence of record, submit to the board a recommended order no
617 later than 60 days after the date of the filing of the hearing
618 transcript. In the event the administrative law judge fails to
619 issue a recommended order within 60 days after the date of the
620 filing of the hearing transcript, the administrative law judge
621 shall submit a report to the board with a copy to all parties
622 within 60 days after the date of the filing of the hearing
623 transcript to advise the board of the reason for the delay in
624 the issuance of the recommended order and of the date by which
625 the recommended order will be issued.

626 (2) (a) Parties to the proceeding shall include:

- 627 1. The applicant.
- 628 2. The Public Service Commission.
- 629 3. The Department of Community Affairs.
- 630 4. The Fish and Wildlife Conservation Commission.
- 631 5. The Department of Transportation.
- 632 6. The water management district.
- 633 7. The department.
- 634 8. The regional planning council.
- 635 9. The local government.

HB 1471

2006

(b) Any party listed in paragraph (a) other than the department or the applicant may waive its right to participate in these proceedings. If such listed party fails to file a notice of its intent to be a party on or before the 90th day prior to the scheduled date for the certification hearing, such party shall be deemed to have waived its right to be a party.

(c) Upon the filing of a notice of intent to be a party with the administrative law judge and no more than 21 days after the date of publication of notice of filing of the application for site certification, the following shall also be parties to the proceeding:

1. Any agency not listed in paragraph (a) as to matters within its jurisdiction.

2. Any domestic nonprofit corporation or association formed, in whole or in part, to promote conservation or natural beauty; to protect the environment, personal health, or other biological values; to preserve historical sites; to promote consumer interests; to represent labor, commercial, or industrial groups; or to promote comprehensive planning or orderly development of the area in which the proposed nuclear power plant is to be located.

(d) Notwithstanding paragraph (e), failure of an agency to file a notice of intent to be a party within the time provided in this section shall constitute a waiver of the right of the agency to participate as a party in the proceeding.

(e) Other parties may include any person, including those persons enumerated in paragraph (c) who have failed to timely file a notice of intent to be a party, whose substantial

HB 1471

2006

664 interests are affected and being determined by the proceeding,
 665 and who timely file a motion to intervene pursuant to chapter
 666 120, Florida Statutes, and applicable rules. Late intervention
 667 pursuant to this paragraph may be granted by the designated
 668 administrative law judge upon a showing of good cause that
 669 excuses such late intervention and upon such conditions as he or
 670 she may prescribe any time prior to 30 days before the
 671 commencement of the certification hearing.

672 (f) Any agency, including those whose properties or works
 673 are affected, shall be made a party upon the request of the
 674 department or the applicant.

675 (3) When appropriate, any person may be given an
 676 opportunity to present oral or written communications to the
 677 designated administrative law judge. If the designated
 678 administrative law judge proposes to consider such
 679 communications, then all parties shall be given an opportunity
 680 to cross-examine or challenge or rebut such communications.

681 (4) The designated administrative law judge shall have all
 682 powers and duties granted to administrative law judges by
 683 chapter 120, Florida Statutes, and this act and by the rules of
 684 the department and the Administration Commission, including the
 685 authority to resolve disputes over the completeness and
 686 sufficiency of an application for certification.

687 Section 12. Final disposition of application.--

688 (1) Within 60 days after the date of the issuance of the
 689 department's recommendation if no hearing is held, or within 60
 690 days after the date of the receipt of the designated
 691 administrative law judge's recommended order following a

692 certification hearing, the board shall act upon the application
693 by written order, approving certification or denying the
694 issuance of a certificate, in accordance with the criteria set
695 forth in this act, and stating the reasons for issuance or
696 denial. If no hearing has been held, the board shall enter a
697 final order approving the proposed nuclear power plant subject
698 only to the conditions of certification contained in the
699 department's recommendation.

700 (2) Following the holding of a certification hearing, in
701 determining whether an application should be approved in whole,
702 approved with modifications or conditions, or denied, the board
703 shall consider whether, and the extent to which, the location,
704 construction, and operation of the proposed nuclear power plant
705 will:

706 (a) Meet the electrical energy needs of the state in an
707 orderly and timely fashion, as determined by the Public Service
708 Commission.

709 (b) Comply with nonprocedural requirements of agencies.

710 (c) Be consistent with applicable local government
711 comprehensive plans and in compliance with applicable zoning
712 ordinances. To the extent the proposed nuclear power plant is
713 not consistent with applicable local government comprehensive
714 plans or is not in compliance with local zoning ordinances, the
715 board shall then order, through appropriate conditions, such
716 reasonable and available methods be utilized as are necessary to
717 minimize any inconsistency with applicable future land use
718 categories or noncompliance with applicable local zoning or

HB 1471

2006

719 otherwise make the proposed nuclear power plant compatible with
720 existing land uses surrounding the site.

721 (d) Effect a reasonable balance between the need for the
722 nuclear power plant as a means of providing abundant low-cost
723 electrical energy and the impact upon the public and the
724 environment resulting from the location, construction, and
725 operation of the proposed nuclear power plant.

726 (3) Following the conduct of a certification hearing, if
727 the certificate is denied, the board shall set forth in writing
728 the actions the applicant would have to take to secure the
729 board's approval of the application.

730 (4) The issues that may be raised in any hearing before
731 the board shall be limited to those matters raised in the
732 certification hearing before the administrative law judge or
733 raised in the recommended order. Only parties may appear before
734 the board and shall be subject to the provisions of s. 120.66,
735 Florida Statutes.

736 (5) In regard to the properties and works of any agency
737 which is a party to the certification hearing, the board shall
738 have the authority to decide issues relating to the use, the
739 connection thereto, or the crossing thereof, for the nuclear
740 power plant and site and to direct any such agency to execute,
741 within 30 days after the entry of certification, the necessary
742 license or easement for such use, connection, or crossing,
743 subject only to the conditions set forth in such certification.

744 Section 13. Alteration of time limits.--Any time
745 limitation in this act may be altered by the designated
746 administrative law judge upon stipulation between the department

HB 1471

2006

and the applicant, unless objected to by any party within 5 days after notice or for good cause shown by any party.

Section 14. Superseded laws, regulations, and certification power.--

(1) If any provision of this act is in conflict with any other provision, limitation, or restriction under any law, rule, regulation, or ordinance of this state or any political subdivision, municipality, or agency, this act shall govern and control, and such law, rule, regulation, or ordinance shall be deemed superseded for the purposes of this act.

(2) The state hereby preempts the siting, regulation, and certification of nuclear power plant sites and nuclear power plants as defined in this act.

(3) The board may adopt reasonable procedural rules pursuant to ss. 120.536(1) and 120.54 to carry out its duties under this act and to give effect to the legislative intent that this act is to provide an efficient, simplified, centrally coordinated, one-stop licensing process.

Section 15. Effect of certification.--

(1) Subject to the conditions set forth in the certification, any certification signed by the Governor shall constitute the sole license of the state and any agency as to the approval of the site and the construction and operation of the proposed nuclear power plant, except for the issuance of department licenses required under any federally delegated or approved permit program and except as otherwise provided in subsection (4).

774 (2)(a) The certification shall authorize the applicant
775 named in the certification to construct and operate the proposed
776 nuclear power plant, subject only to the conditions of
777 certification set forth in the certification, and except for the
778 issuance of department licenses or permits required under any
779 federally delegated or approved permit program.

780 (b) Except as provided in subsection (4), the
781 certification may include conditions that constitute variances,
782 exemptions, or exceptions from nonprocedural requirements of the
783 department or any agency which were expressly considered during
784 the proceeding unless waived by the agency as provided below and
785 which otherwise would be applicable to the construction and
786 operation of the proposed nuclear power plant. No variance,
787 exemption, exception, or other relief shall be granted from a
788 state statute or rule for the protection of endangered or
789 threatened species, aquatic preserves, Outstanding National
790 Resource Waters, and Outstanding Florida Waters, or for the
791 disposal of hazardous waste, except to the extent authorized by
792 the applicable statute or rule, or upon a finding by the board
793 that certifying the nuclear power plant at the site proposed by
794 the applicant overrides the public interest protected by the
795 statute or rule from which relief is sought. Each party shall
796 notify the applicant and other parties no more than 60 days
797 after the application is determined sufficient of any
798 nonprocedural requirements not specifically listed in the
799 application from which a variance, exemption, exception, or
800 other relief is necessary in order for the board to certify any
801 nuclear power plant proposed for certification. Failure of such

HB 1471

2006

802 notification by an agency shall be treated as a waiver from
803 nonprocedural requirements of the department or any other
804 agency. However, no variance shall be granted from standards or
805 regulations of the department applicable under any federally
806 delegated or approved permit program, except as expressly
807 allowed in such program.

808 (c) To the extent any condition of certification imposed
809 pursuant to this act is inconsistent with or otherwise in
810 conflict with any requirement of federal law, regulation, or
811 license regulating construction and operation of a nuclear power
812 plant certified under this act, then such condition of
813 certification shall be automatically modified to conform to such
814 federal requirement or be superseded by such federal
815 requirement. The state shall not enforce compliance with any
816 such federal requirement under this act, except to the extent
817 the state is authorized to enforce such condition under federal
818 law.

819 (3) The certification shall be in lieu of any license,
820 permit, certificate, or similar document required by any agency
821 pursuant to, but not limited to, chapter 125, chapter 161,
822 chapter 163, chapter 166, chapter 186, chapter 253, chapter 298,
823 chapter 370, chapter 373, chapter 376, chapter 380, chapter 381,
824 chapter 387, chapter 403, except for permits issued pursuant to
825 s. 403.0885, Florida Statutes, and except as provided in s.
826 403.509(3) and (6), Florida Statutes, or chapter 404, Florida
827 Statutes, the Florida Transportation Code, or 33 U.S.C. s. 1341.

828 (4) This act shall not affect in any way the right of any
829 local government to charge appropriate fees or require that

830 construction be in compliance with applicable building
 831 construction codes, provided that in the event of a conflict
 832 between requirements of local building construction codes and
 833 federal requirements, such federal requirements shall supersede
 834 local building construction codes.

835 (5) (a) A nuclear power plant certified pursuant to this
 836 act shall comply with rules adopted by the department subsequent
 837 to the issuance of the certification which prescribe new or
 838 stricter criteria, to the extent that the rules are applicable
 839 to nuclear power plants. Except when express variances,
 840 exceptions, exemptions, or other relief have been granted,
 841 subsequently adopted rules which prescribe new or stricter
 842 criteria shall operate as automatic modifications to
 843 certifications. A holder of a certification issued under this
 844 act may apply to the board for relief from such rules to the
 845 extent relief is available to other electrical power plants in
 846 the state. Any such relief shall be granted in the same manner
 847 as provided for the granting of relief at the time of the
 848 original certification, as provided for in this act.

849 (b) Upon written notification to the department, any
 850 holder of a certification issued pursuant to this act may choose
 851 to operate the certified nuclear power plant in compliance with
 852 any rule subsequently adopted by the department which prescribes
 853 criteria more lenient than the criteria required by the terms
 854 and conditions in the certification which are not site-specific.

855 (c) No term or condition of certification shall be
 856 interpreted to preclude the postcertification exercise by any
 857 party of whatever procedural rights it may have under chapter

HB 1471

2006

120, Florida Statutes, including those related to rulemaking
proceedings.

Section 16. Notice; costs of proceeding.--

(1) The following notices are to be published by the
applicant:

(a) A notice of filing of the application, which shall be
published as specified in subsection (2) within 15 days after
the application has been determined complete. Such notice shall
give notice of the provisions of section 15(1) and (2).

(b) Notice of issuance of the department's agency report
and recommendation, which shall be published as specified in
subsection (2) no later than 10 days after the report and
recommendation are issued by the department.

(c) If a certification hearing is to be conducted, then
notice published as specified in subsection (2).

(d) Notice of modification when required by the
department, based on whether the requested modification of
certification will significantly increase impacts to the
environment or the public. Such notice shall be published as
specified under subsection (2):

1. Within 21 days after receipt of a request for
modification, except that the newspaper notice shall be of a
size as directed by the department commensurate with the scope
of the modification.

2. If a hearing is to be conducted in response to the
request for modification, then notice shall be provided as
specified in paragraph (c).

HB 1471

2006

885 (e) Notice of a supplemental application, which shall be
886 published as follows:

887 1. Notice of receipt of the supplemental application shall
888 be published as specified in paragraph (a).

889 2. Notice of the certification hearing shall be published
890 as specified in paragraph (d).

891 (2) Notices provided by the applicant shall be published
892 in newspapers of general circulation within the county or
893 counties in which the proposed nuclear power plant will be
894 located. The newspaper notices shall be at least one-half page
895 in size in a standard size newspaper or a full page in a tabloid
896 size newspaper and published in a section of the newspaper other
897 than the legal notices section. These notices shall include a
898 map generally depicting the project and all associated
899 facilities corridors, including associated transmission lines,
900 if any. A newspaper of general circulation shall be the
901 newspaper which has the largest daily circulation in that county
902 and has its principal office in that county. If the newspaper
903 with the largest daily circulation has its principal office
904 outside the county, the notices shall appear in both the
905 newspaper having the largest circulation in that county and in a
906 newspaper authorized to publish legal notices in that county.

907 (3) All notices published by the applicant shall be paid
908 for by the applicant and shall be in addition to the application
909 fee.

910 (4) The department shall:

911 (a) Publish in the manner specified in chapter 120,
912 Florida Statutes, notices of the filing of the application or

HB 1471

2006

913 supplemental application; of the department's report and
 914 recommendation; the certification hearing, if one is to be held;
 915 the hearing before the board; and stipulations, proposed agency
 916 action, or petitions for modification.

917 (b) Provide copies of those notices to any persons who
 918 have requested to be placed on the departmental mailing list for
 919 this purpose.

920 (5) The applicant shall pay those expenses and costs
 921 associated with the conduct of the hearings and the recording
 922 and transcription of the proceedings.

923 Section 17. Revocation or suspension of
 924 certification.--Any certification may be revoked or suspended:

925 (1) For any material false statement in the application or
 926 in the supplemental or additional statements of fact or studies
 927 required of the applicant when a true answer would have
 928 warranted the board's refusal to recommend a certification in
 929 the first instance.

930 (2) For failure to comply with the terms or conditions of
 931 the certification.

932 (3) For violation of the provisions of this act or rules
 933 or orders issued under this act.

934 Section 18. Review.--Proceedings under this act shall be
 935 subject to judicial review in the Florida Supreme Court.
 936 Separate appeals of the certification order issued by the board
 937 and of any department permit issued pursuant to a federally
 938 delegated or approved permit program shall be consolidated for
 939 purposes of judicial review. Review on appeal shall be based
 940 solely on the record before the board and briefs to the court

HB 1471

2006

and shall be limited to determining whether the certification order conforms to the constitution and laws of this state and the United States and is within the authority of the board under this act. The Supreme Court shall proceed to hear and determine the action as expeditiously as practicable and give the action precedence over other matters not accorded similar precedence by law.

Section 19. Enforcement of compliance.--Failure to obtain a certification or to comply with the conditions of certification or this act shall constitute a violation of chapter 403, Florida Statutes.

Section 20. Availability of information.--The department shall make available for public inspection and copying during regular office hours, at the expense of any person requesting copies, any information filed or submitted to the department pursuant to this act.

Section 21. Modification of certification.--

(1) A certification may be modified after issuance in any one of the following ways:

(a) The board may delegate to the department the authority to modify specific conditions in the certification.

(b) The department may modify the terms and conditions of the certification if no party to the certification hearing objects in writing to such modification within 45 days after notice by mail to such party's last address of record and if no other person whose substantial interests will be affected by the modification objects in writing within 30 days after issuance of

HB 1471

2006

public notice. If objections are raised, the applicant may file a petition for modification pursuant to paragraph (c).

(c) Any petition for modification shall be filed with the department and the Division of Administrative Hearings. A petition for modification may be filed by the applicant or the department setting forth:

1. The proposed modification.

2. The factual reasons asserted for the modification.

3. The anticipated effects of the proposed modification on the applicant, the public, and the environment.

(2) Petitions filed pursuant to this section shall be disposed of in the same manner as an application, but with time periods established by the administrative law judge commensurate with the significance of the modification requested.

(3) Any agreement or modification under this section must be in accordance with the terms of this act. No modification to a certification shall be granted that constitutes a variance from standards or regulations of the department applicable under any federally delegated or approved permit program, except as expressly allowed in such program.

Section 22. Supplemental applications for sites certified for ultimate site capacity.--

(1)(a) The department shall adopt rules governing the processing of supplemental applications for certification of the construction and operation of nuclear power plants to be located at sites which have been previously certified for an ultimate site capacity pursuant to this act. Supplemental applications shall be limited to nuclear power plants using the fuel type

HB 1471

2006

previously certified for that site. The rules adopted pursuant to this section shall include provisions for:

1. Prompt appointment of a designated administrative law judge.

2. The contents of the supplemental application.

3. Resolution of disputes as to the completeness and sufficiency of supplemental applications by the designated administrative law judge.

4. Public notice of the filing of the supplemental applications.

5. Time limits for prompt processing of supplemental applications.

6. Final disposition by the board within 215 days after the filing of a complete supplemental application.

(b) The time limits shall not exceed any time limitation governing the review of initial applications for site certification pursuant to this act, it being the legislative intent to provide shorter time limitations for the processing of supplemental applications for nuclear power plants to be constructed and operated at sites which have been previously certified for an ultimate site capacity.

(c) Any time limitation in this section or in rules adopted pursuant to this section may be altered by the designated administrative law judge upon stipulation between the department and the applicant, unless objected to by any party within 5 days after notice or for good cause shown by any party. The parties to the proceeding shall adhere to the provisions of

HB 1471

2006

chapter 120, Florida Statutes, and this act in considering and processing such supplemental applications.

(2) Supplemental applications shall be reviewed as provided in this act, except that the time limits provided in this section shall apply to such supplemental applications.

(3) For the purposes of this act, the term "ultimate site capacity" means the maximum generating capacity for a site as certified by the board.

Section 23. Fees; disposition.--The department shall charge the applicant the following fees, as appropriate, which shall be paid into the Florida Permit Fee Trust Fund:

(1) An application fee, which shall not exceed \$200,000. The fee shall be fixed by rule on a sliding scale related to the size, type, ultimate site capacity, increase in generating capacity proposed by the application, or the number and size of local governments in whose jurisdiction the nuclear power plant is located.

(a) Sixty percent of the fee shall go to the department to cover any costs associated with reviewing and acting upon the application, to cover any field services associated with monitoring construction and operation of the facility, and to cover the costs of the public notices published by the department.

(b) Twenty percent of the fee or \$25,000, whichever is greater, shall be transferred to the Administrative Trust Fund of the Division of Administrative Hearings of the Department of Management Services.

HB 1471

2006

1050 (c) Upon written request with proper itemized accounting
1051 within 90 days after final agency action by the board or
1052 withdrawal of the application, the department shall reimburse
1053 the Department of Community Affairs, the Fish and Wildlife
1054 Conservation Commission, any water management district created
1055 pursuant to chapter 373, Florida Statutes, regional planning
1056 council, and local government in the jurisdiction of which the
1057 proposed nuclear power plant is to be located, and any other
1058 agency from which the department requests special studies
1059 pursuant to this act. Such reimbursement shall be authorized for
1060 the preparation of any studies required of the agencies by this
1061 act, for agency travel and per diem to attend any hearing held
1062 pursuant to this act, and for local governments to participate
1063 in the proceedings. In the event the amount available for
1064 allocation is insufficient to provide for complete reimbursement
1065 to the agencies, reimbursement shall be on a prorated basis.

1066 (d) If any sums are remaining, the department shall retain
1067 them for its use in the same manner as is otherwise authorized
1068 by this act; provided, however, that if the certification
1069 application is withdrawn, the remaining sums shall be refunded
1070 to the applicant within 90 days after withdrawal.

1071 (2) A certification modification fee, which shall not
1072 exceed \$30,000. The fee shall be submitted to the department
1073 with a formal petition for modification to the department. This
1074 fee shall be established, disbursed, and processed in the same
1075 manner as the application fee in subsection (1), except that the
1076 Division of Administrative Hearings shall not receive a portion
1077 of the fee unless the petition for certification modification is

HB 1471

2006

referred to the Division of Administrative Hearings for hearing.
If the petition is so referred, only \$10,000 of the fee shall be
transferred to the Administrative Trust Fund of the Division of
Administrative Hearings of the Department of Management
Services. The fee for a modification by agreement shall be
\$10,000, to be paid upon the filing of the request for
modification. Any sums remaining after payment of authorized
costs shall be refunded to the applicant within 90 days after
issuance or denial of the modification or withdrawal of the
request for modification.

(3) A supplemental application fee, not to exceed \$75,000,
to cover all reasonable expenses and costs of the review,
processing, and proceedings of a supplemental application. This
fee shall be established, disbursed, and processed in the same
manner as the certification application fee in subsection (1),
except that only \$20,000 of the fee shall be transferred to the
Administrative Trust Fund of the Division of Administrative
Hearings of the Department of Management Services.

Section 24. Exclusive forum for determination of need.--

(1) On request by an applicant, the Public Service
Commission shall begin a proceeding to determine the need for a
nuclear power plant subject to this act. The commission shall
publish a notice of the proceeding in a newspaper of general
circulation in each county in which the proposed nuclear power
plant will be located. The notice shall be at least one-quarter
of a page and published at least 45 days prior to the scheduled
date for the proceeding.

HB 1471

2006

(2)(a) The commission shall hold a hearing within 90 days after the filing of the petition and shall grant or deny the petition to determine need within 135 days after the date of the filing of the petition. The commission shall be the sole forum for the determination of this matter and the issues addressed in the petition, which accordingly shall not be reviewed in any other forum. In making its determination to either grant or deny a petition for determination of need, the commission shall consider the need for electric system reliability and integrity, including fuel diversity, the need for base-load generating capacity, and the need for adequate electricity at a reasonable cost.

(b) The applicant's petition shall include:

1. A description of the need for the generation capacity.
2. A description of how the proposed nuclear power plant will enhance the reliability of electric power production within the state by improving the balance of power plant fuel diversity and reducing Florida's dependence on fuel oil and natural gas.
3. A description of and a nonbinding estimate of the cost of the nuclear power plant.
4. The annualized base revenue requirement for the first 12 months of operation of the nuclear power plant.

(c) The commission shall grant a petition on a finding that the nuclear power plant will:

1. Provide needed base-load capacity.
2. Enhance the reliability of electric power production within the state by improving the balance of power plant fuel

HB 1471

2006

diversity and reducing Florida's dependence on fuel oil and natural gas.

3. Provide a cost-effective, although not necessarily the least-cost alternative source of power, taking into account the need to improve the balance of fuel diversity, reduce Florida's dependence on fuel oil and natural gas, mitigate air emission effects within the state, and contribute to the long-term stability and reliability of the electric grid.

(3) No provision of rule 25-22.082, Florida Administrative Code, shall be applicable to a nuclear power plant sited under this act, including provisions for cost recovery, and an applicant shall not otherwise be required to secure competitive proposals for power supply prior to making application under this act or receiving a determination of need from the commission.

(4) The commission's determination of need for a nuclear power plant shall create a presumption of public need and necessity and shall serve as the commission's report. An order entered pursuant to this section constitutes final agency action and is not subject to review under chapter 120, Florida Statutes. A petition for reconsideration of a final order on a petition for need determination shall be filed within 5 days after the date of such order. Within 30 days after the commission order or a decision denying a request for reconsideration or, if the request for reconsideration is granted, within 30 days after the commission issues its decision on reconsideration, an adversely affected party may petition for judicial review in the Florida Supreme Court. The petition for

HB 1471

2006

1160 review shall be served upon the executive director of the
1161 commission personally or by service at the office of the
1162 commission. Review on appeal shall be based solely on the record
1163 before the commission and briefs to the court and shall be
1164 limited to determining whether the order issued pursuant to
1165 subsection (2), or the order on reconsideration, conforms to the
1166 constitution and laws of this state and the United States and is
1167 within the authority of the commission under this section.
1168 Inasmuch as delay in the determination of need will delay siting
1169 of a nuclear power plant or diminish the opportunity for savings
1170 to customers under the federal Energy Policy Act of 2005, the
1171 Supreme Court shall proceed to hear and determine the action as
1172 expeditiously as practicable and give the action precedence over
1173 matters not accorded similar precedence by law.

1174 (5) After a petition for determination of need has been
1175 granted, the right of a utility to recover any costs incurred
1176 prior to commercial operation, including, but not limited to
1177 costs associated with the siting, design, licensing, or
1178 construction of the plant, shall not be subject to challenge
1179 unless and only to the extent the commission finds, based on
1180 clear and convincing evidence adduced at a hearing initiated by
1181 the commission under s. 120.57, Florida Statutes, that the
1182 utility was imprudent in incurring costs significantly in excess
1183 of the initial, nonbinding estimate provided by the utility
1184 pursuant to this act. Proceeding with the construction of the
1185 nuclear power plant following an order by the commission
1186 approving the need for the nuclear power plant under this act
1187 shall not constitute or be evidence of imprudence. Imprudence

HB 1471

2006

1188 also shall not include any cost increases due to events beyond
 1189 the utility's control, including, but not limited to:

1190 (a) Delays in obtaining necessary governmental agency
 1191 permits or licenses.

1192 (b) Delays due to litigation.

1193 (c) Increases in equipment, engineering, material, or
 1194 construction costs.

1195 (d) Increases in costs due to inflation or other economic
 1196 factors.

1197 (e) Increases in costs due to laws, regulations, or
 1198 regulatory conditions imposed by a state or federal governmental
 1199 agency or court following the issuance of a need determination
 1200 order by the commission.

1201
 1202 Further, a utility's right to recover costs associated with a
 1203 nuclear power plant may not be raised in any other forum or in
 1204 the review of proceedings in such other forum. Appeals shall be
 1205 governed in accordance with subsection (4). Costs incurred prior
 1206 to commercial operation shall be recovered pursuant to chapter
 1207 366, Florida Statutes.

1208 Section 25. This act shall take effect upon becoming law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. 1471

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Council/Committee hearing bill: Utilities & Telecommunications
Committee

Representative(s) Attkisson offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Short title.--This act may be cited as the
"Florida Energy Diversity and Efficiency Act."

Section 2. Purpose.--The Legislature finds that the state,
its residents, and its economy benefit from diverse sources of
fuel for the generation of electricity. Diversity of fuel
sources contributes to lower cost electricity and improved
reliability of electric supply, as the state will not be
dependent upon a particular source of fuel. Nuclear power plants
are important sources of electric generation that contribute to
the diversity of fuel sources within the state. The state has
five operating nuclear power plants that have operated reliably
for the benefit of the state, and contributed a stable supply of
electricity, with minimal impacts on the state's environment.
The citizens of the state and electric power consumers have
benefited from the operation of existing nuclear power plants

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

23 within the state through low-cost and reliable energy
24 production, electric grid reliability, and economic and
25 environmental benefits. The Legislature further finds and
26 declares it is in the public interest and critical to the
27 health, prosperity, and general welfare of the state and its
28 citizens to promote the expansion of nuclear generation by the
29 siting of new nuclear power plants within the state so as to
30 continue these benefits and further ensure the state's access to
31 safe, reliable, efficient, and affordable electric service,
32 thereby enhancing the state's economic future while protecting
33 the environment. Recent events have shown the state's
34 vulnerability to disruptions and price volatility in its
35 electric supplies from the importation of natural gas and fuel
36 oil from domestic and foreign sources. The federal Energy Policy
37 Act of 2005 contains important provisions to promote the
38 construction and operation of new nuclear power plants in the
39 United States, including financial incentives for qualifying
40 advanced nuclear power plants and incentives that are limited to
41 the first 6,000 megawatts of advanced nuclear power plant
42 generating capacity licensed in the United States. The state
43 would benefit from timely siting of a qualifying advanced
44 nuclear power plant as a source of low-cost electricity. In
45 consideration of the present and predicted growth in electric
46 power needs in this state, and the potential for additional
47 reliable sources of electricity from nuclear power plants, the
48 Legislature finds that there is a need to develop a procedure
49 for the selection and utilization of sites for electrical
50 generating facilities utilizing nuclear energy and for the
51 identification of a state position with respect to each proposed
52 site and nuclear power plant. The Legislature recognizes that
53 the selection of sites for new or expanded nuclear-powered

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

54 electrical generating plants, including any associated linear
55 facilities, will have a significant impact upon the welfare of
56 the population, the location and growth of industry, and the use
57 of the natural resources of the state. The Legislature finds
58 that the efficiency of the permit application and review process
59 at both the state and local level would be improved with the
60 implementation of a process in which a permit application for
61 nuclear power plants would be centrally coordinated and all
62 permit decisions could be reviewed on the basis of adopted
63 standards and recommendations of the deciding agencies. A
64 centrally coordinated permitting process would also enhance the
65 state's ability to become the location of a qualifying advanced
66 nuclear power plant. Nuclear power plants may also be the
67 location of or otherwise promote other public benefits for water
68 supply projects, industrial development, or other activities.
69 Legislation that addresses issues unique to the siting of
70 nuclear power plants is required to encourage electric utilities
71 to site and operate new nuclear power plant facilities within
72 the state and to take advantage of provisions of the federal
73 Energy Policy Act of 2005 that operate to reduce the overall
74 costs of such plants. The state shall promote and approve new
75 nuclear-powered electrical generating facilities that will
76 reasonably balance the increasing demands for reliable, cost
77 effective electric power and decisions about electrical power
78 plant location, construction, and operation with the broad
79 interests of the public.

80 Section 3. Definitions.--As used in this act:

81 (1) "Act" means the Florida Energy Diversity and
82 Efficiency Act.

83 (2) "Agency," as the context requires, means an official,
84 officer, commission, authority, council, committee, department,

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

85 division, bureau, board, section, or other unit or entity of
86 government, including a regional or local governmental entity.

87 (3) "Amendment" means a change in the information provided
88 by the applicant to the application for certification made after
89 the initial application filing.

90 (4) "Applicant" means any electric utility as defined
91 under s. 366.8255(1)(a), Florida Statutes, city, town, county,
92 public utility district, electric cooperative, or joint
93 operating agency, or combination thereof, authorized under
94 Florida law to engage in the business of generating,
95 transmitting, or distributing electric energy to retail electric
96 customers in the state.

97 (5) "Application" means the documents required by the
98 department to be filed to initiate a certification proceeding
99 and shall include the documents necessary for the department to
100 render a decision on any permit required pursuant to any
101 federally delegated or approved permit program.

102 (6) "Associated facility" means any facility that directly
103 supports the construction and operation of the nuclear power
104 plant, including, but not limited to, any substation,
105 transmission line that connects the electrical power plant to an
106 electrical transmission network, and right-of-way to which the
107 applicant intends to connect.

108 (7) "Associated transmission line" means any new or
109 upgraded transmission line that is owned by the applicant and
110 connects the electrical power plant to a electrical transmission
111 network or right-of-way to which the applicant intends to
112 connect, including, at the applicant's option, any proposed
113 terminal or intermediate substation, substation expansion
114 connected to the associated transmission line to be certified,
115 or new transmission line or upgrade or improvement of an

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

existing transmission line that is owned by the applicant on any portion of the state's electrical transmission system necessary to support the generation injected into the system from the proposed nuclear power plant.

(8) "Board" means the Governor and Cabinet sitting as the Nuclear Power Plant Siting Board.

(9) "Certification" means the written order of the board approving an application in whole or with such changes or conditions as the board may deem appropriate.

(10) "Completeness" means that the application has addressed all applicable sections of the prescribed application format and that those sections are sufficient in comprehensiveness of data or in quality of information provided to allow the department to determine whether the application provides the reviewing agencies adequate information to prepare the reports required by this act.

(11) "Corridor" means the proposed area within which an associated linear facility right-of-way is to be located. The width of the corridor proposed for certification as an associated facility, at the option of the applicant, may be the width of the right-of-way or a wider boundary, not to exceed a width of 1 mile, within which the right-of-way will be located. The area within the corridor in which a right-of-way may be located may be further restricted by a condition of certification. After all property interests required for the right-of-way have been acquired by the applicant, the boundaries of the area certified shall narrow to only that land within the boundaries of the right-of-way.

(12) "Department" means the Department of Environmental Protection.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

146 (13) "Designated administrative law judge" means the
147 administrative law judge assigned by the Division of
148 Administrative Hearings pursuant to chapter 120, Florida
149 Statutes, to conduct the hearings required by this act.

150 (14) "Federally delegated or approved permit program"
151 means any environmental regulatory program approved by an agency
152 of the Federal Government so as to authorize the department to
153 administer and issue licenses pursuant to federal law,
154 including, but not limited to, new source review permits,
155 operation permits for major sources of air pollution, and
156 prevention of significant deterioration permits under the Clean
157 Air Act (42 U.S.C. ss. 7401 et seq.), permits under ss. 402 and
158 404 of the Clean Water Act (33 U.S.C. ss. 1251 et seq.), and
159 permits under the Resource Conservation and Recovery Act (42
160 U.S.C. ss. 6901 et seq.).

161 (15) "License" means a franchise, permit, certification,
162 registration, charter, comprehensive plan amendment, development
163 order, or permit as defined in chapters 163 and 380, Florida
164 Statutes, or similar form of authorization required by law,
165 including permits issued under federally delegated or approved
166 permit programs, but it does not include a license required
167 primarily for revenue purposes when issuance of the license is a
168 ministerial act.

169 (16) "Local government" means a municipality or county in
170 the jurisdiction of which the nuclear power generating facility
171 is proposed to be located, unless the term is expressly stated
172 to also include the local governments in the jurisdiction of
173 which associated facilities or associated transmission lines are
174 located.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

175 (17) "Modification" means any change in the certification
176 order after issuance, including a change in the conditions of
177 certification.

178 (18) "Nonprocedural requirements of agencies" means any
179 agency's regulatory requirements established by statute, rule,
180 ordinance, or comprehensive plan, excluding any provisions
181 prescribing forms, fees, procedures, or time limits for the
182 review or processing of information submitted to demonstrate
183 compliance with such regulatory requirements.

184 (19) "Notice of intent" means that notice which is filed
185 with the department on behalf of an applicant prior to
186 submission of an application pursuant to this act and which
187 notifies the department of an intent to file an application.

188 (20) "Nuclear power generating facility" means the
189 nuclear-fueled electrical generating facility within a nuclear
190 power plant but, for purposes of this act, excludes any
191 associated facility or associated transmission line.

192 (21) "Nuclear power plant" means, for the purpose of
193 certification, any electrical generating facility using any
194 process involving nuclear materials, fuels, or processes and, at
195 the applicant's election, includes associated facilities and
196 associated transmission lines.

197 (22) "Preliminary statement of issues" means a listing and
198 explanation of those issues within the agency's jurisdiction
199 which are of major concern to the agency in relation to the
200 proposed nuclear power plant.

201 (23) "Public Service Commission" or "commission" means the
202 agency created pursuant to chapter 350, Florida Statutes.

203 (24) "Regional planning council" means a regional planning
204 council as defined in s. 186.503(4), Florida Statutes, in the

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

jurisdiction of which the nuclear power generating facility is proposed to be located.

(25) "Right-of-way" means land necessary for the construction and maintenance of an associated linear facility, such as a railroad line, pipeline, or transmission line, including associated facilities and associated transmission lines. The typical width of the right-of-way shall be identified in the application. The right-of-way shall be located within the certified corridor and shall be identified by the applicant subsequent to certification in documents filed with the department prior to construction.

(26) "Site" means any proposed location wherein a nuclear power generating facility, or a nuclear power generating facility alteration or addition resulting in an increase in generating capacity, will be located within state jurisdiction. The site may include appropriate buffers and may accommodate facilities constructed by the applicant or an agency to further an objective of an adopted water management district water supply plan. For purposes of this act, the term "site" does not include any associated facilities or associated transmission lines.

(27) "Site certification" means the final order issued by the board approving with any conditions or modifications a proposed nuclear power plant.

(28) "State comprehensive plan" means that plan set forth in chapter 187, Florida Statutes.

(29) "Water management district" means a water management district, created pursuant to chapter 373, Florida Statutes, in the jurisdiction of which the nuclear power plant is proposed to be located.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

235 Section 4. Department of Environmental Protection; powers and
236 duties enumerated.--The department shall have the following
237 powers and duties in relation to this act:

238 (1) To adopt rules within six months of the effective date
239 of this act pursuant to ss. 120.536(1) and 120.54, Florida
240 Statutes, to implement the provisions of this act.

241 (2) To prescribe the form and content of the public
242 notices and the notice of intent and the form, content, and
243 necessary supporting documentation and studies to be prepared by
244 the applicant for nuclear power plant site certification
245 applications. The department shall utilize any existing site
246 certification application forms and instructions adopted
247 pursuant to the Florida Electrical Power Plant Siting Act, ss.
248 403.501-403.518, Florida Statutes, until such new forms are
249 adopted by the department.

250 (3) To receive applications for nuclear power plant site
251 certifications and to determine the completeness thereof.

252 (4) To make, or contract for, studies of nuclear power
253 plant site certification applications.

254 (5) To administer the processing of applications for
255 nuclear power plant site certifications and to ensure that the
256 applications are processed as expeditiously as possible.

257 (6) To require such fees as allowed by this act.

258 (7) To conduct studies and prepare a written analysis.

259 (8) To prescribe the means for monitoring continued
260 compliance with terms of the certification.

261 (9) To notify all affected agencies of the filing of a
262 notice of intent within 15 days after receipt of the notice.

263 (10) To issue, with the nuclear power plant certification,
264 any license required pursuant to any federally delegated or
265 approved permit program.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Section 5. Applicability and certification.--

(1) The provisions of this act shall apply exclusively to any nuclear power plant as defined in this act and to any expansion in steam-generating capacity of any existing nuclear power plant. No construction of any new nuclear power plant or expansion in steam-generating capacity of any existing nuclear power plant may be undertaken after the effective date of this act without first obtaining certification as provided in this act. Except as otherwise provided in this subsection, this act shall not apply to any such nuclear power plant that is presently operating or that has, upon the effective date of this act, applied for a permit or certification under requirements in force prior to the effective date of such act.

(2) Except as provided in the certification, modification of nuclear fuels, internal-related hardware, or operating conditions not in conflict with certification, which increase the electrical output of a unit to no greater capacity than the maximum operating capacity of the existing electrical generator, shall not constitute an alteration or addition to generating capacity which requires certification pursuant to this act.

(3) The application for any related department license which is required pursuant to any federally delegated or approved permit program shall be processed within the time periods allowed by this act, in lieu of those specified in s. 120.60, Florida Statutes.

Section 6. Distribution of application; schedules.--

(1) Within 7 days after the filing of an application, the department shall provide to the applicant and the Division of Administrative Hearings the names and addresses of those affected or other agencies entitled to notice and copies of the application and any amendments.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

297 (2) Within 7 days after the filing of an application, the
298 department shall prepare a schedule of dates for submission of
299 statements of issues, determination of completeness, and
300 submittal of final reports from affected and other agencies,
301 petition for a certification hearing, and other significant
302 dates to be followed during the certification process, including
303 dates for filing notices of appearance to be a party pursuant to
304 section 12(3)(c). The schedule shall establish the date for
305 conduct of any certification hearing as provided for in this
306 act. This schedule shall be timely provided by the department to
307 the applicant, the administrative law judge, all agencies
308 identified pursuant to subsection (1), and all parties.

309 (3) Within 7 days after the department issues the names
310 and addresses of those affected or other agencies entitled to
311 notice and copies of the application and any amendments, the
312 applicant shall distribute copies of the application to all
313 agencies identified by the department. Copies of changes and
314 amendments to the application shall be timely distributed by the
315 applicant to all affected agencies and parties.

316 Section 7. Appointment of administrative law judge.--
317 Within 7 days after receipt of an application, the department
318 shall request the Division of Administrative Hearings to
319 designate an administrative law judge to conduct the hearings
320 required by this act. The division director shall designate an
321 administrative law judge within 7 days after receipt of the
322 request from the department.

323 Section 8. Determination of completeness.--

324 (1) Within 45 days after the distribution of the
325 application or amendment to a pending application, the
326 department shall file a statement with the Division of
327 Administrative Hearings and with the applicant declaring its

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

328 position with regard to the completeness of the application or
329 amendment. The department's statement shall be based upon
330 consultation with the affected agencies, which shall submit to
331 the department recommendations on the completeness of the
332 application within 30 days after distribution of the
333 application.

334 (2) If the department declares the application or
335 amendment incomplete, the applicant may withdraw the application
336 or amendment. If the applicant declines to withdraw the
337 application or amendment, the applicant may, at its option:

338 (a) Within 40 days after the department filed its
339 statement of incompleteness or such later date as authorized by
340 department rules, file additional information necessary to make
341 the application or amendment complete. If the applicant makes
342 its application or amendment complete within this time
343 period, the time schedules under this act shall not be tolled by
344 the department's statement of incompleteness.

345 (b) Advise the department and the administrative law judge
346 that the information necessary to make the application or
347 amendment complete cannot be supplied within the time period
348 authorized in paragraph (a). The time schedules under this act
349 shall be tolled from the date of the notice of incompleteness
350 until the application or amendment is determined complete.

351 (c) Contest the statement of incompleteness by filing a
352 request for a hearing with the administrative law judge within
353 15 days after the filing of the statement of incompleteness. If
354 a hearing is requested by the applicant, all time schedules
355 under this act shall be tolled as of the department's statement
356 of incompleteness, pending the administrative law judge's
357 decision concerning the dispute. A hearing shall be held no
358 later than 21 days after the filing of the statement by the

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

department, and a final decision shall be rendered by the administrative law judge within 10 days after the hearing.

(3)(a) If the administrative law judge determines, contrary to the department, that an application or amendment is complete, all time schedules under this act shall resume as of the date of the administrative law judge's determination.

(b) If the administrative law judge agrees that the application is incomplete, all time schedules under this act shall remain tolled until the applicant files additional information and the application or amendment is determined complete by the department or the administrative law judge.

(4) If, within 30 days after receipt of the additional information submitted pursuant to paragraph (2)(a), paragraph (2)(b), or paragraph (3)(b), based upon the recommendations of the affected agencies, the department determines that the additional information supplied by an applicant does not render the application or amendment complete, the applicant may exercise any of the options specified in subsection (2) as often as may be necessary to resolve the dispute.

Section 9. Land use and zoning consistency.--

(1) The applicant shall include in the application a statement on the consistency of the site or any directly associated facilities with existing land use plans and zoning ordinances which were in effect on the date the application was filed, and a full description of such consistency.

(2) Within 80 days of the filing of the application, each local government shall file a determination with the Department, the applicant, the administrative law judge, and all parties on the consistency of the site or any directly associated facilities with existing land use plans and zoning ordinances which were in effect on the date the application was filed,

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

390 based on the information provided in the application. The
391 applicant shall publish notice of the consistency determination
392 in accordance with the requirements of section 17(1)(b).

393 (3) If any substantially affected person wishes to dispute
394 the local government's determination, he or she shall file a
395 petition with the department within 15 days of the publication
396 of notice of the local government's determination. If a hearing
397 is requested, the provisions of s. 403.508(1) shall apply.

398 (4) The dates in this section may be altered upon
399 agreement between the applicant, the local government, and the
400 department pursuant to s. 403.5095.

401 (5) If it is determined by the local government that the
402 proposed site or directly associated facility does conform with
403 existing land use plans and zoning ordinances in effect as of
404 the date of the application and no petition has been filed, the
405 responsible zoning or planning authority shall not thereafter
406 change such land use plans or zoning ordinances so as to
407 foreclose construction and operation of the proposed site or
408 directly associated facilities unless certification is
409 subsequently denied or withdrawn.

410 Section 10. Preliminary statements of issues, reports, and
411 studies.-

412 (1) Each affected agency identified in paragraph (2)(a)
413 shall submit a preliminary statement of issues to the department
414 and the applicant no later than 45 days after the distribution
415 of the application. The failure to raise an issue in this
416 statement shall not preclude the issue from being raised in the
417 agency's report.

418 (2)(a) The following agencies shall prepare reports as
419 provided below and shall submit them to the department and the

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

applicant within 60 days after the application is determined
complete:

1. The Department of Community Affairs shall prepare a
report containing recommendations which address the impact upon
the public of the proposed nuclear power plant, based on the
degree to which the nuclear power plant is consistent with the
applicable portions of the state comprehensive plan and other
such matters within its jurisdiction.

2. The Public Service Commission shall prepare a report as
to the present and future need for the electrical generating
capacity to be supplied by the proposed nuclear power plant. The
report shall include the commission's determination pursuant to
section 25(4) and may include the commission's comments with
respect to any other matters within its jurisdiction.

3. The water management district shall prepare a report as
to matters within its regulatory jurisdiction.

4. Each local government in whose jurisdiction the
proposed nuclear power plant, including associated facilities
and associated transmission lines, is to be located shall
prepare a report as to the consistency of the proposed nuclear
power plant with all applicable local ordinances, regulations,
standards, or criteria that apply to the proposed nuclear power
plant, including adopted local comprehensive plans, land
development regulations, and any applicable local environmental
regulations adopted pursuant to s. 403.182, Florida Statutes, or
by other means. Each local government in which the nuclear power
generating facility is to be located shall also report on
whether the proposed site for a nuclear power generating
facility is located in a future land use category and a zoning
district, as adopted by the local government and which were in
effect on the date upon which the application was filed, which

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

451 permits the location of a nuclear power generating facility. If
452 the proposed site for a nuclear power generating facility is not
453 located in a future land use category or zoning district which
454 allows such a use, then the local government shall identify the
455 future land use category or zoning district which would be
456 required to allow the proposed nuclear power generating facility
457 on the proposed site. If the proposed site for a nuclear power
458 generating facility is not located in a future land use category
459 or zoning district which allows such a use, the local government
460 shall identify in its report any reasonable and available
461 methods which the local government believes are necessary to
462 make the proposed use of the site for a nuclear power generating
463 facility consistent with the local comprehensive plan future
464 land use category, in compliance with the local zoning code or
465 compatible with the existing land uses surrounding the proposed
466 nuclear power generating facility site.

467 5. The Fish and Wildlife Conservation Commission shall
468 prepare a report as to matters within its jurisdiction.

469 6. The regional planning council shall prepare a report
470 containing recommendations that address the impact upon the
471 public of the proposed nuclear power plant, as identified under
472 the applicable provisions of the strategic regional policy plan
473 adopted pursuant to chapter 186, Florida Statutes.

474 7. The Department of Health shall prepare a report as to
475 matters within its jurisdiction.

476 8. The Department of Transportation shall prepare a report
477 as to the impact of the proposed nuclear power plant and
478 associated linear facilities on roads, railroads, airports,
479 aeronautics, seaports, and other matters within its
480 jurisdiction.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

481 9. Any other agency, if requested by the department and
482 upon approval of the assigned administrative law judge, shall
483 also perform studies or prepare reports as to matters within
484 that agency's jurisdiction which may be directly affected by the
485 proposed nuclear power plant.

486 (b) Each report described in this subsection shall contain
487 all information on variances, exemptions, exceptions, or other
488 relief which may be required and any proposed conditions of
489 certification on matters within the jurisdiction of such agency.
490 For each condition proposed by an agency in its report, the
491 agency shall list the specific statute, rule, or ordinance which
492 authorizes the proposed condition. No condition of certification
493 may be imposed upon a nuclear power plant project that is not
494 directly required to ensure compliance with a specific statute,
495 rule, or ordinance of an agency or the criteria set forth in
496 this act.

497 (c) The agencies shall initiate the activities required by
498 this section no later than 30 days after the complete
499 application is distributed.

500 (3) The department shall prepare a written analysis, which
501 shall be filed with the designated administrative law judge and
502 served on all parties no later than 85 days after the
503 application is found complete, but no later than 60 days prior
504 to the scheduled date for the certification hearing if a
505 petition for hearing were to be filed, and which shall include:

506 (a) A statement indicating whether the proposed nuclear
507 power plant and proposed ultimate site capacity will be in
508 compliance with the rules of the department and in compliance
509 with a specific statute, rule, or ordinance of an agency
510 identified in that agency's report.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

511 (b) Copies of the studies and reports required by this
512 act.

513 (c) The comments received by the department from any other
514 agency or person.

515 (d) The recommendation of the department as to the
516 disposition of the application, of variances, exemptions,
517 exceptions, or other relief identified by any party, and of any
518 proposed conditions of certification which the department
519 believes should be imposed, including any conditions proposed by
520 an agency which the department believes should be imposed in any
521 final certification.

522 (e) The recommendation of the department regarding the
523 issuance of any license required pursuant to a federally
524 delegated or approved permit program.

525 (4) Except when good cause is shown, the failure of any
526 agency to submit a preliminary statement of issues or a report,
527 or to submit its preliminary statement of issues or report
528 within the allowed time, shall not be grounds for the alteration
529 of any time limitation in this act. Neither the failure to
530 submit a preliminary statement of issues or a report nor the
531 inadequacy of the preliminary statement of issues or report
532 shall be grounds to deny or condition certification.

533 Section 11. Notice of department recommendation, petition
534 for certification hearing.--

535 (1) The department and the applicant shall publish a
536 public notice as provided for in this section, announcing the
537 issuance of the department's recommendation on the application
538 for site certification. The notice shall be published in the
539 newspaper or newspapers in the jurisdictions where the proposed
540 nuclear power plant and any associated facility are proposed to
541 be located. The notice shall inform the public of the issuance

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

542 of the department's report, the conclusion reached in that
543 report, and the locations where the department's report and the
544 application are available for public inspection.

545 (2) Within 14 days after its receipt of the department's
546 recommendation or within 14 days after the newspaper notice of
547 the department's recommendation, whichever occurs first, any
548 party or any person whose substantial interests may be affected
549 by the proposed nuclear power plant may file with the department
550 a petition for a site certification hearing. The petition shall
551 identify the person filing the petition, identify the
552 substantial interests alleged to be affected, and identify with
553 specificity those issues which the person alleges require the
554 conduct of a certification hearing on the proposed nuclear power
555 plant.

556 (3) Failure to timely file a petition for a certification
557 hearing shall result in the department's recommendation becoming
558 final and no longer subject to challenge or reversal in any
559 proceeding, including, before the board. Only those conditions
560 contained in the department's recommendation may be imposed
561 upon the proposed nuclear power plant.

562 Section 12. Land use and certification hearings parties,
563 participants.--

564 (1)(a) If a petition for a hearing on land use has been
565 filed pursuant to section 9(3), the designated administrative
566 law judge shall conduct a land use hearing in the county of the
567 proposed site or directly associated facility, as applicable, as
568 expeditiously as possible, but not later than days after the
569 department's receipt of the petition. The place of such hearing
570 shall be as close as possible to the proposed site or directly
571 associated facility. If a petition is filed, the hearing shall
572 be held regardless of the status of the completeness of the

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

573 application. However, incompleteness of information necessary
574 for a local government to evaluate an application may be claimed
575 by the local government as cause for a statement of
576 inconsistency with existing land use plans and zoning ordinances
577 under s. 403.50665.

578 (b) Notice of the land use hearing shall be published in
579 accordance with the requirements of section 17.

580 (c) The sole issue for determination at the land use
581 hearing shall be whether or not the proposed site is consistent
582 and in compliance with existing land use plans and zoning
583 ordinances. If the administrative law judge concludes that the
584 proposed site is not consistent or in compliance with existing
585 land use plans and zoning ordinances, the administrative law
586 judge shall receive at the hearing evidence on, and address in
587 the recommended order any changes to, or approvals or variances
588 under the applicable land use plans or zoning which will render
589 the proposed site consistent and in compliance with the local
590 land use plans and zoning ordinances.

591 (d) The designated administrative law judge's recommended
592 order shall be issued within 30 days after completion of the
593 hearing and shall be reviewed by the board within 60 days after
594 receipt of the recommended order by the board.

595 (e) If it is determined by the board that the proposed
596 site does conform with existing land use plans and zoning
597 ordinances in effect as of the date of the application, or as
598 otherwise provided by this act the responsible zoning or
599 planning authority shall not thereafter change such land use
600 plans or zoning ordinances so as to foreclose construction and
601 operation of the proposed power plant on the proposed site or
602 directly associated facilities unless certification is
603 subsequently denied or withdrawn.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

604 (f) If it is determined by the board that the proposed
605 site does not conform with existing land use plans and zoning
606 ordinances, the board may, if it determines after notice and
607 hearing and upon consideration of the recommended order on land
608 use and zoning issues that it is in the public interest to
609 authorize the use of the land as a site for an electrical power
610 plant, authorize an amendment to, rezoning, variance or other
611 approval to the adopted land use plan and zoning ordinances
612 required to render the proposed site consistent with local land
613 use plans and zoning ordinances. The board's action shall not be
614 controlled by any other procedural requirements of law. In the
615 event a variance or other approval is denied by the board, it
616 shall be the responsibility of the applicant to make the
617 necessary application to the applicable local government for any
618 approvals determined by the board as required to make the
619 proposed site consistent and in compliance with local land use
620 plans and zoning ordinances. No further action may be taken on
621 the complete application until the proposed site conforms to the
622 adopted land use plan or zoning ordinances or the board grants
623 relief as provided under this act.

624 (2) If any party or person whose substantial interests are
625 affected files a petition for a certification hearing within 14
626 days after publication of notice of the department's notice of
627 its recommendation on the application for site certification, a
628 certification hearing shall be held by the designated
629 administrative law judge no later than 260 days from the date
630 the application is filed with the department. However, an
631 affirmative determination of need by the Public Service
632 Commission pursuant to this act shall be a condition precedent
633 to the conduct of the certification hearing. If a timely
634 petition for a certification hearing is filed, the certification

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

635 hearing shall be held at a location in proximity to the proposed
636 site. The certification hearing shall also constitute the sole
637 hearing allowed by chapter 120, Florida Statutes, to determine
638 the substantial interest of a party regarding any required
639 agency license or any related permit required pursuant to any
640 federally delegated or approved permit program. At the
641 conclusion of the certification hearing, the designated
642 administrative law judge shall, after consideration of all
643 evidence of record, submit to the board a recommended order no
644 later than 60 days after the date of the filing of the hearing
645 transcript. In the event the administrative law judge fails to
646 issue a recommended order within 60 days after the date of the
647 filing of the hearing transcript, the administrative law judge
648 shall submit a report to the board with a copy to all parties
649 within 60 days after the date of the filing of the hearing
650 transcript to advise the board of the reason for the delay in
651 the issuance of the recommended order and of the date by which
652 the recommended order will be issued.

653 (3) (a) Parties to the proceeding shall include:

- 654 1. The applicant.
- 655 2. The Public Service Commission.
- 656 3. The Department of Community Affairs.
- 657 4. The Fish and Wildlife Conservation Commission.
- 658 5. The Department of Transportation.
- 659 6. The water management district.
- 660 7. The department.
- 661 8. The regional planning council.
- 662 9. The local government.

663 (b) Any party listed in paragraph (a) other than the
664 department or the applicant may waive its right to participate
665 in these proceedings. If such listed party fails to file a

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

notice of its intent to be a party on or before the 90th day prior to the scheduled date for the certification hearing, such party shall be deemed to have waived its right to be a party.

(c) Upon the filing of a notice of intent to be a party with the administrative law judge and no more than 21 days after the date of publication of notice of filing of the application for site certification, the following shall also be parties to the proceeding:

1. Any agency not listed in paragraph (a) as to matters within its jurisdiction.

2. Any domestic nonprofit corporation or association formed, in whole or in part, to promote conservation or natural beauty; to protect the environment, personal health, or other biological values; to preserve historical sites; to promote consumer interests; to represent labor, commercial, or industrial groups; or to promote comprehensive planning or orderly development of the area in which the proposed nuclear power plant is to be located.

(d) Notwithstanding paragraph (e), failure of an agency to file a notice of intent to be a party within the time provided in this section shall constitute a waiver of the right of the agency to participate as a party in the proceeding.

(e) Other parties may include any person, including those persons enumerated in paragraph (c) who have failed to timely file a notice of intent to be a party, whose substantial interests are affected and being determined by the proceeding, and who timely file a motion to intervene pursuant to chapter 120, Florida Statutes, and applicable rules. Late intervention pursuant to this paragraph may be granted by the designated administrative law judge upon a showing of good cause that excuses such late intervention and upon such conditions as he or

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

697 she may prescribe any time prior to 30 days before the
698 commencement of the certification hearing.

699 (f) Any agency, including those whose properties or works
700 are affected, shall be made a party upon the request of the
701 department or the applicant.

702 (4) When appropriate, any person may be given an
703 opportunity to present oral or written communications to the
704 designated administrative law judge. If the designated
705 administrative law judge proposes to consider such
706 communications, then all parties shall be given an opportunity
707 to cross-examine or challenge or rebut such communications.

708 (5) The designated administrative law judge shall have all
709 powers and duties granted to administrative law judges by
710 chapter 120, Florida Statutes, and this act and by the rules of
711 the department and the Administration Commission, including the
712 authority to resolve disputes over the completeness and
713 sufficiency of an application for certification.

714 Section 13. Final disposition of application.--

715 (1) Within 60 days after the date of the issuance of the
716 department's recommendation if no hearing is held, or within 60
717 days after the date of the receipt of the designated
718 administrative law judge's recommended order following a
719 certification hearing, the board shall act upon the application
720 by written order, approving certification or denying the
721 issuance of a certificate, in accordance with the criteria set
722 forth in this act, and stating the reasons for issuance or
723 denial. If no hearing has been held, the board shall enter a
724 final order approving the proposed nuclear power plant subject
725 only to the conditions of certification contained in the
726 department's recommendation.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

(2) Following the holding of a certification hearing, in determining whether an application should be approved in whole, approved with modifications or conditions, or denied, the board shall consider whether, and the extent to which, the location, construction, and operation of the proposed nuclear power plant will:

(a) Meet the electrical energy needs of the state in an orderly and timely fashion, as determined by the Public Service Commission.

(b) Comply with nonprocedural requirements of agencies.

(c) Be consistent with applicable local government comprehensive plans and in compliance with applicable zoning ordinances.

(d) Effect a reasonable balance between the need for the nuclear power plant as a means of providing abundant low-cost electrical energy and the impact upon the public and the environment resulting from the location, construction, and operation of the proposed nuclear power plant.

(3) Following the conduct of a certification hearing, if the certificate is denied, the board shall set forth in writing the actions the applicant would have to take to secure the board's approval of the application.

(4) The issues that may be raised in any hearing before the board shall be limited to those matters raised in the certification hearing before the administrative law judge or raised in the recommended order. Only parties may appear before the board and shall be subject to the provisions of s. 120.66, Florida Statutes.

(5) In regard to the properties and works of any agency which is a party to the certification hearing, the board shall have the authority to decide issues relating to the use, the

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

connection thereto, or the crossing thereof, for the nuclear power plant and site and to direct any such agency to execute, within 30 days after the entry of certification, the necessary license or easement for such use, connection, or crossing, subject only to the conditions set forth in such certification.

Section 14. Alteration of time limits.--Any time limitation in this act may be altered by the designated administrative law judge upon stipulation between the department and the applicant, unless objected to by any party within 5 days after notice or for good cause shown by any party.

Section 15. Superseded laws, regulations, and certification power.--

(1) If any provision of this act is in conflict with any other provision, limitation, or restriction under any law, rule, regulation, or ordinance of this state or any political subdivision, municipality, or agency, this act shall govern and control, and such law, rule, regulation, or ordinance shall be deemed superseded for the purposes of this act.

(2) The state hereby preempts the siting, regulation, and certification of nuclear power plant sites and nuclear power plants as defined in this act.

(3) The board may adopt reasonable procedural rules pursuant to ss. 120.536(1) and 120.54 to carry out its duties under this act and to give effect to the legislative intent that this act is to provide an efficient, simplified, centrally coordinated, one-stop licensing process.

Section 16. Effect of certification.--

(1) Subject to the conditions set forth in the certification, any certification signed by the Governor shall constitute the sole license of the state and any agency as to the approval of the site and the construction and operation of

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

789 the proposed nuclear power plant, except for the issuance of
790 department licenses required under any federally delegated or
791 approved permit program and except as otherwise provided in
792 subsection (4).

793 (2)(a) The certification shall authorize the applicant
794 named in the certification to construct and operate the proposed
795 nuclear power plant, subject only to the conditions of
796 certification set forth in the certification, and except for the
797 issuance of department licenses or permits required under any
798 federally delegated or approved permit program.

799 (b) Except as provided in subsection (4), the
800 certification may include conditions that constitute variances,
801 exemptions, or exceptions from nonprocedural requirements of the
802 department or any agency which were expressly considered during
803 the proceeding including but not limited to any site specific
804 criteria, standards or limitations under local land use or and
805 zoning approvals which affect the proposed power plant or its
806 site unless waived by the agency as provided below and which
807 otherwise would be applicable to the construction and operation
808 of the proposed nuclear power plant. No variance, exemption,
809 exception, or other relief shall be granted from a state statute
810 or rule for the protection of endangered or threatened species,
811 aquatic preserves, Outstanding National Resource Waters, and
812 Outstanding Florida Waters, or for the disposal of hazardous
813 waste, except to the extent authorized by the applicable statute
814 or rule, or upon a finding by the board that certifying the
815 nuclear power plant at the site proposed by the applicant
816 overrides the public interest protected by the statute or rule
817 from which relief is sought. Each party shall notify the
818 applicant and other parties no more than 60 days after the
819 application is determined sufficient of any nonprocedural

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

requirements not specifically listed in the application from which a variance, exemption, exception, or other relief is necessary in order for the board to certify any nuclear power plant proposed for certification. Failure of such notification by an agency shall be treated as a waiver from nonprocedural requirements of the department or any other agency. However, no variance shall be granted from standards or regulations of the department applicable under any federally delegated or approved permit program, except as expressly allowed in such program.

(c) To the extent any condition of certification imposed pursuant to this act is inconsistent with or otherwise in conflict with any requirement of federal law, regulation, or license regulating construction and operation of a nuclear power plant certified under this act, then such condition of certification shall be automatically modified to conform to such federal requirement or be superseded by such federal requirement. The state shall not enforce compliance with any such federal requirement under this act, except to the extent the state is authorized to enforce such condition under federal law.

(3) The certification and any order on land use and zoning issued under this act shall be in lieu of any license, permit, certificate, or similar document required by any agency pursuant to, but not limited to, chapter 125, chapter 161, chapter 163, chapter 166, chapter 186, chapter 253, chapter 298, chapter 370, chapter 373, chapter 376, chapter 380, chapter 381, chapter 387, chapter 403, except for permits issued pursuant to s. 403.0885, Florida Statutes, and except as provided in s. 403.509(3) and (6), Florida Statutes, or chapter 404, Florida Statutes, the Florida Transportation Code, or 33 U.S.C. s. 1341.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

850 (4) This act shall not affect in any way the right of any
851 local government to charge appropriate fees or require that
852 construction be in compliance with applicable building
853 construction codes, provided that in the event of a conflict
854 between requirements of local building construction codes and
855 federal requirements, such federal requirements shall supersede
856 local building construction codes.

857 (5)(a) A nuclear power plant certified pursuant to this
858 act shall comply with rules adopted by the department subsequent
859 to the issuance of the certification which prescribe new or
860 stricter criteria, to the extent that the rules are applicable
861 to nuclear power plants. Except when express variances,
862 exceptions, exemptions, or other relief have been granted,
863 subsequently adopted rules which prescribe new or stricter
864 criteria shall operate as automatic modifications to
865 certifications. A holder of a certification issued under this
866 act may apply to the board for relief from such rules to the
867 extent relief is available to other electrical power plants in
868 the state. Any such relief shall be granted in the same manner
869 as provided for the granting of relief at the time of the
870 original certification, as provided for in this act.

871 (b) Upon written notification to the department, any
872 holder of a certification issued pursuant to this act may choose
873 to operate the certified nuclear power plant in compliance with
874 any rule subsequently adopted by the department which prescribes
875 criteria more lenient than the criteria required by the terms
876 and conditions in the certification which are not site-specific.

877 (c) No term or condition of certification shall be
878 interpreted to preclude the postcertification exercise by any
879 party of whatever procedural rights it may have under chapter

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

120, Florida Statutes, including those related to rulemaking proceedings.

Section 17. Notice; costs of proceeding.--

(1) The following notices are to be published by the applicant:

(a) A notice of filing of the application, which shall be published as specified in subsection (2) within 15 days after the application has been determined complete. Such notice shall give notice of the provisions of section 16(1) and (2).

(b) Notice of the land use determination made pursuant to section 9(1) within 15 days after the determination is filed.

(c) Notice of the land use hearing, which shall be published as specified in subsection (2), no later than 15 days before the hearing.

(d) Notice of issuance of the department's agency report and recommendation, which shall be published as specified in subsection (2) no later than 10 days after the report and recommendation are issued by the department.

(e) If a certification hearing is to be conducted, then notice published as specified in subsection (2).

(f) Notice of modification when required by the department, based on whether the requested modification of certification will significantly increase impacts to the environment or the public. Such notice shall be published as specified under subsection (2):

1. Within 21 days after receipt of a request for modification, except that the newspaper notice shall be of a size as directed by the department commensurate with the scope of the modification.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

909 2. If a hearing is to be conducted in response to the
910 request for modification, then notice shall be provided as
911 specified in paragraph (e).

912 (g) Notice of a supplemental application, which shall be
913 published as follows:

914 1. Notice of receipt of the supplemental application shall
915 be published as specified in paragraph (a).

916 2. Notice of the certification hearing shall be published
917 as specified in paragraph (f).

918 (2) Notices provided by the applicant shall be published
919 in newspapers of general circulation within the county or
920 counties in which the proposed nuclear power plant will be
921 located. The newspaper notices shall be at least one-half page
922 in size in a standard size newspaper or a full page in a tabloid
923 size newspaper and published in a section of the newspaper other
924 than the legal notices section. These notices shall include a
925 map generally depicting the project and all associated
926 facilities corridors, including associated transmission lines,
927 if any. A newspaper of general circulation shall be the
928 newspaper which has the largest daily circulation in that county
929 and has its principal office in that county. If the newspaper
930 with the largest daily circulation has its principal office
931 outside the county, the notices shall appear in both the
932 newspaper having the largest circulation in that county and in a
933 newspaper authorized to publish legal notices in that county.

934 (3) All notices published by the applicant shall be paid
935 for by the applicant and shall be in addition to the application
936 fee.

937 (4) The department shall:

938 (a) Publish in the manner specified in chapter 120,
939 Florida Statutes, notices of the filing of the application or

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

940 supplemental application; of the land use determination and of
941 the land use hearing, if one is to be held; of the department's
942 report and recommendation; the certification hearing, if one is
943 to be held; the hearing before the board; and stipulations,
944 proposed agency action, or petitions for modification.

945 (b) Provide copies of those notices to any persons who
946 have requested to be placed on the departmental mailing list for
947 this purpose.

948 (5) The applicant shall pay those expenses and costs
949 associated with the conduct of the hearings and the recording
950 and transcription of the proceedings.

951 Section 18 Revocation or suspension of certification.--Any
952 certification may be revoked or suspended:

953 (1) For any material false statement in the application or
954 in the supplemental or additional statements of fact or studies
955 required of the applicant when a true answer would have
956 warranted the board's refusal to recommend a certification in
957 the first instance.

958 (2) For failure to comply with the terms or conditions of
959 the certification.

960 (3) For violation of the provisions of this act or rules
961 or orders issued under this act.

962 Section 19. Review.--Proceedings under this act shall be
963 subject to judicial review in the Florida Supreme Court.
964 Separate appeals of the certification order issued by the board
965 and of any department permit issued pursuant to a federally
966 delegated or approved permit program shall be consolidated for
967 purposes of judicial review. Review on appeal shall be based
968 solely on the record before the board and briefs to the court
969 and shall be limited to determining whether the certification
970 order conforms to the constitution and laws of this state and

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

971 the United States and is within the authority of the board under
972 this act. The Supreme Court shall proceed to hear and determine
973 the action as expeditiously as practicable and give the action
974 precedence over other matters not accorded similar precedence by
975 law.

976 Section 20. Enforcement of compliance.--Failure to obtain
977 a certification or to comply with the conditions of
978 certification or this act shall constitute a violation of
979 chapter 403, Florida Statutes.

980 Section 21. Availability of information.--The department
981 shall make available for public inspection and copying during
982 regular office hours, at the expense of any person requesting
983 copies, any information filed or submitted to the department
984 pursuant to this act.

985 Section 22. Modification of certification.--

986 (1) A certification may be modified after issuance in any
987 one of the following ways:

988 (a) The board may delegate to the department the authority
989 to modify specific conditions in the certification.

990 (b) The department may modify the terms and conditions of
991 the certification if no party to the certification hearing
992 objects in writing to such modification within 45 days after
993 notice by mail to such party's last address of record and if no
994 other person whose substantial interests will be affected by the
995 modification objects in writing within 30 days after issuance of
996 public notice. If objections are raised, the applicant may file
997 a petition for modification pursuant to paragraph (c).

998 (c) Any petition for modification shall be filed with the
999 department and the Division of Administrative Hearings. A
1000 petition for modification may be filed by the applicant or the
1001 department setting forth:

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

1. The proposed modification.

2. The factual reasons asserted for the modification.

3. The anticipated effects of the proposed modification on the applicant, the public, and the environment.

(2) Petitions filed pursuant to this section shall be disposed of in the same manner as an application, but with time periods established by the administrative law judge commensurate with the significance of the modification requested.

(3) Any agreement or modification under this section must be in accordance with the terms of this act. No modification to a certification shall be granted that constitutes a variance from standards or regulations of the department applicable under any federally delegated or approved permit program, except as expressly allowed in such program.

Section 23. Supplemental applications for sites certified for ultimate site capacity.--

(1)(a) The department shall adopt rules governing the processing of supplemental applications for certification of the construction and operation of nuclear power plants to be located at sites which have been previously certified for an ultimate site capacity pursuant to this act. Supplemental applications shall be limited to nuclear power plants using the fuel type previously certified for that site. The rules adopted pursuant to this section shall include provisions for:

1. Prompt appointment of a designated administrative law judge.

2. The contents of the supplemental application.

3. Resolution of disputes as to the completeness and sufficiency of supplemental applications by the designated administrative law judge.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

1032 4. Public notice of the filing of the supplemental
1033 applications.

1034 5. Time limits for prompt processing of supplemental
1035 applications.

1036 6. Final disposition by the board within 215 days after
1037 the filing of a complete supplemental application.

1038 (b) The time limits shall not exceed any time limitation
1039 governing the review of initial applications for site
1040 certification pursuant to this act, it being the legislative
1041 intent to provide shorter time limitations for the processing of
1042 supplemental applications for nuclear power plants to be
1043 constructed and operated at sites which have been previously
1044 certified for an ultimate site capacity.

1045 (c) Any time limitation in this section or in rules
1046 adopted pursuant to this section may be altered by the
1047 designated administrative law judge upon stipulation between the
1048 department and the applicant, unless objected to by any party
1049 within 5 days after notice or for good cause shown by any party.
1050 The parties to the proceeding shall adhere to the provisions of
1051 chapter 120, Florida Statutes, and this act in considering and
1052 processing such supplemental applications.

1053 (2) Supplemental applications shall be reviewed as
1054 provided in this act, except that the time limits provided in
1055 this section shall apply to such supplemental applications.

1056 (3) The land use and zoning consistency determination of
1057 s. 403.50665 shall not be applicable to the processing of
1058 supplemental applications pursuant to this section so long as:

1059 (a) The previously certified ultimate site capacity is not
1060 exceeded; and

1061 (b) The lands required for the construction or operation
1062 of the electrical power plant which is the subject of the

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

1063 supplemental application are within the boundaries of the
1064 previously certified site.

1065 (4) For the purposes of this act, the term "ultimate site
1066 capacity" means the maximum generating capacity for a site as
1067 certified by the board.

1068 Section 24. Fees; disposition.--The department shall
1069 charge the applicant the following fees, as appropriate, which
1070 shall be paid into the Florida Permit Fee Trust Fund:

1071 (1) An application fee, which shall not exceed \$200,000.
1072 The fee shall be fixed by rule on a sliding scale related to the
1073 size, type, ultimate site capacity, increase in generating
1074 capacity proposed by the application, or the number and size of
1075 local governments in whose jurisdiction the nuclear power plant
1076 is located.

1077 (a) Sixty percent of the fee shall go to the department to
1078 cover any costs associated with reviewing and acting upon the
1079 application, to cover any field services associated with
1080 monitoring construction and operation of the facility, and to
1081 cover the costs of the public notices published by the
1082 department.

1083 (b) Twenty percent of the fee or \$25,000, whichever is
1084 greater, shall be transferred to the Administrative Trust Fund
1085 of the Division of Administrative Hearings of the Department of
1086 Management Services.

1087 (c) Upon written request with proper itemized accounting
1088 within 90 days after final agency action by the board or
1089 withdrawal of the application, the department shall reimburse
1090 the Department of Community Affairs, the Fish and Wildlife
1091 Conservation Commission, any water management district created
1092 pursuant to chapter 373, Florida Statutes, regional planning
1093 council, and local government in the jurisdiction of which the

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

1094 proposed nuclear power plant is to be located, and any other
1095 agency from which the department requests special studies
1096 pursuant to this act. Such reimbursement shall be authorized for
1097 the preparation of any studies required of the agencies by this
1098 act, for agency travel and per diem to attend any hearing held
1099 pursuant to this act, and for local governments to participate
1100 in the proceedings. In the event the amount available for
1101 allocation is insufficient to provide for complete reimbursement
1102 to the agencies, reimbursement shall be on a prorated basis.

1103 (d) If any sums are remaining, the department shall retain
1104 them for its use in the same manner as is otherwise authorized
1105 by this act; provided, however, that if the certification
1106 application is withdrawn, the remaining sums shall be refunded
1107 to the applicant within 90 days after withdrawal.

1108 (2) A certification modification fee, which shall not
1109 exceed \$30,000. The fee shall be submitted to the department
1110 with a formal petition for modification to the department. This
1111 fee shall be established, disbursed, and processed in the same
1112 manner as the application fee in subsection (1), except that the
1113 Division of Administrative Hearings shall not receive a portion
1114 of the fee unless the petition for certification modification is
1115 referred to the Division of Administrative Hearings for hearing.
1116 If the petition is so referred, only \$10,000 of the fee shall be
1117 transferred to the Administrative Trust Fund of the Division of
1118 Administrative Hearings of the Department of Management
1119 Services. The fee for a modification by agreement shall be
1120 \$10,000, to be paid upon the filing of the request for
1121 modification. Any sums remaining after payment of authorized
1122 costs shall be refunded to the applicant within 90 days after
1123 issuance or denial of the modification or withdrawal of the
1124 request for modification.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

1125 (3) A supplemental application fee, not to exceed \$75,000,
1126 to cover all reasonable expenses and costs of the review,
1127 processing, and proceedings of a supplemental application. This
1128 fee shall be established, disbursed, and processed in the same
1129 manner as the certification application fee in subsection (1)
1130 except that only \$20,000 of the fee shall be transferred to the
1131 Administrative Trust Fund of the Division of Administrative
1132 Hearings of the Department of Management Services.

1133 Section 25. Exclusive forum for determination of need.--

1134 (1) On request by an applicant, the Public Service
1135 Commission shall begin a proceeding to determine the need for a
1136 nuclear power plant subject to this act. The applicant shall
1137 publish a notice of the proceeding in a newspaper of general
1138 circulation in each county in which the proposed nuclear power
1139 plant will be located. The notice shall be at least one-quarter
1140 of a page and published at least 21 days prior to the scheduled
1141 date for the proceeding.

1142 (2)(a) The commission shall hold a hearing within 90 days
1143 after the filing of the petition and shall issue an order
1144 granting or denying the petition to determine need within 135
1145 days after the date of the filing of the petition. The
1146 commission shall be the sole forum for the determination of this
1147 matter and the issues addressed in the petition, which
1148 accordingly shall not be reviewed in any other forum. In making
1149 its determination to either grant or deny a petition for
1150 determination of need, the commission shall consider the need
1151 for electric system reliability and integrity, including fuel
1152 diversity, the need for base-load generating capacity, and the
1153 need for adequate electricity at a reasonable cost.

1154 (b) The applicant's petition shall include:

1155 1. A description of the need for the generation capacity.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

2. A description of how the proposed nuclear power plant will enhance the reliability of electric power production within the state by improving the balance of power plant fuel diversity and reducing Florida's dependence on fuel oil and natural gas.

3. A description of and a nonbinding estimate of the cost of the nuclear power plant.

4. The annualized base revenue requirement for the first 12 months of operation of the nuclear power plant.

(c) In making its determination, the commission shall take into account matters within its jurisdiction, which it deems relevant, including whether the nuclear power plant will:

1. Provide needed base-load capacity.

2. Enhance the reliability of electric power production within the state by improving the balance of power plant fuel diversity and reducing Florida's dependence on fuel oil and natural gas.

3. Provide the most cost-effective source of power, taking into account the need to improve the balance of fuel diversity, reduce Florida's dependence on fuel oil and natural gas, reduce air emission compliance costs, and contribute to the long-term stability and reliability of the electric grid.

(3) No provision of rule 25-22.082, Florida Administrative Code, shall be applicable to a nuclear power plant sited under this act, including provisions for cost recovery, and an applicant shall not otherwise be required to secure competitive proposals for power supply prior to making application under this act or receiving a determination of need from the commission.

(4) The commission's determination of need for a nuclear power plant shall create a presumption of public need and necessity and shall serve as the commission's report. An order

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

1187 entered pursuant to this section constitutes final agency
1188 action. Any petition for reconsideration of a final order on a
1189 petition for need determination shall be filed within 5 days
1190 after the date of such order. The commission's final order,
1191 including any order on reconsideration, shall be reviewable on
1192 appeal in the Florida Supreme Court. Inasmuch as delay in the
1193 determination of need will delay siting of a nuclear power plant
1194 or diminish the opportunity for savings to customers under the
1195 federal Energy Policy Act of 2005, the Supreme Court shall
1196 proceed to hear and determine the action as expeditiously as
1197 practicable and give the action precedence over matters not
1198 accorded similar precedence by law.

1199 (5) After a petition for determination of need has been
1200 granted, the right of a utility to recover any costs incurred
1201 prior to commercial operation, including, but not limited to
1202 costs associated with the siting, design, licensing, or
1203 construction of the plant, shall not be subject to challenge
1204 unless and only to the extent the commission finds, based on a
1205 preponderance of the evidence adduced at a hearing before the
1206 commission under s. 120.57, Florida Statutes, that certain costs
1207 were imprudently incurred. Proceeding with the construction of
1208 the nuclear power plant following an order by the commission
1209 approving the need for the nuclear power plant under this act
1210 shall not constitute or be evidence of imprudence. Imprudence
1211 also shall not include any cost increases due to events beyond
1212 the utility's control.

1213
1214 Further, a utility's right to recover costs associated with a
1215 nuclear power plant may not be raised in any other forum or in
1216 the review of proceedings in such other forum. Costs incurred

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

1217 prior to commercial operation shall be recovered pursuant to
1218 chapter 366, Florida Statutes.

1219 Section 26. 366.93 is created to read:

1220 366.93 Cost recovery for the siting, design, licensing,
1221 and construction of nuclear power plants.--

1222 (1) As used in this section, the term:

1223 (a) "Cost" includes, but is not limited to, all capital
1224 investments, including rate of return, any applicable taxes, and
1225 all expenses, including operation and maintenance expenses,
1226 related to or resulting from the siting, licensing, design,
1227 construction or operation of the nuclear power plant.

1228 (b) "Electric utility" or "utility" has the same meaning
1229 as that provided in s. 366.8255(1)(a),

1230 (c) "Nuclear power plant" or "plant" has the same meaning
1231 as that provided in the Florida Energy Diversity and Efficiency
1232 Act.

1233 (d) "Pre-construction" is that period of time after a site
1234 has been selected through and including the date the utility
1235 begins site clearing work. Preconstruction costs shall be
1236 afforded deferred accounting treatment and shall accrue a
1237 carrying charge equal to the utility's AFUDC rate until
1238 recovered in rates.

1239 (2) Within six months after the enactment of this act, the
1240 Commission shall establish, by rule, alternative cost recovery
1241 mechanisms for the recovery of costs incurred in the siting,
1242 design, licensing and construction of nuclear power plant. Such
1243 mechanisms shall be designed to promote utility investment in
1244 nuclear plants and allow for the recovery in rates all prudently
1245 incurred costs, and shall include, but are not limited to:

1246 (a) Recovery through the capacity cost recovery clause of
1247 any preconstruction costs.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

1248 (b) Recovery through an incremental increase in the
1249 utility's capacity cost recovery clause rates the carrying costs
1250 on the utility's projected construction cost balance associated
1251 with the nuclear power plant. To encourage investment and
1252 provide certainty, for nuclear power plant need petitions
1253 submitted on or before December 31, 2010, associated carrying
1254 costs shall be equal to the pre-tax AFUDC in effect upon this
1255 bill becoming law. For nuclear power plants for which need
1256 petitions are submitted after December 31, 2010, the utility's
1257 existing pre-tax AFUDC rate is presumed to be appropriate unless
1258 determined otherwise by the commission in the determination of
1259 need for the nuclear power plant.

1260 (3) After a petition for determination of need is granted,
1261 a utility may petition the Commission for cost recovery as
1262 permitted by this section and Commission rules.

1263 (4) When the nuclear power plant is placed in commercial
1264 service, the utility shall be allowed to increase its base rate
1265 charges by the projected annual revenue requirements of the
1266 nuclear power plant based on the jurisdictional annual revenue
1267 requirements of the plant for the first twelve months of
1268 operation. The rate of return on capital investments shall be
1269 calculated using the utility's rate of return last approved by
1270 the commission prior to the commercial in-service date of the
1271 nuclear power plant. If any existing generating plant is
1272 retired as a result of operation of the nuclear power plant, the
1273 commission shall allow for the recovery, through an increase in
1274 base rate charges, of the net book value of the retired plant
1275 over a period not to exceed five years.

1276 (5) The utility shall report to the commission annually
1277 the budgeted and actual costs as compared to the estimated in-
1278 service cost of the nuclear power plant provided by the utility

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

pursuant to section 25(2)(b) until the commercial operation of the nuclear power plant. The utility shall provide such information on an annual basis following the final order by the commission approving the determination of need for the nuclear power plant, with the understanding that some costs may be higher than estimated and other costs may be lower.

(6) In the event the utility elects not to complete or is precluded from completing construction of the nuclear power plant, the utility shall be allowed to recover all prudent pre-construction and construction costs incurred following the commission's issuance of a final order granting a determination of need for the nuclear power plant. The utility shall recover such costs through the capacity cost recovery clause over a period equal to the period during which the costs were incurred or five years, whichever were greater. The un-recovered balance during the recovery period will accrue interest at the utility's weighted average cost of capital as reported in the commission's earnings surveillance reporting requirement for the prior year.

Section 27. This act shall take effect upon becoming law.

===== T I T L E A M E N D M E N T =====

Remove everthing before the enacting clause and insert:

A bill to be entitled

An act relating to the "Florida Energy Diversity and Efficiency Act"; providing a short title; providing purpose; providing definitions; providing requirements for the authorization, certification, and siting of nuclear power plants; providing for a Nuclear Power Plant Siting Board; enumerating the related powers and duties of the Department of Environmental Protection, including rulemaking authority; requiring certain application,

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

1310 certification, and licensure of nuclear power plants; specifying
1311 applicability to certain nuclear power plants; providing for
1312 distribution of certain applications and schedules; directing
1313 the Division of Administrative Hearings to appoint an
1314 administrative judge to conduct certain hearings; providing for
1315 the determination of application and amendment completeness;
1316 requiring a review of land use and zoning consistency; requiring
1317 affected agencies to submit certain reports; providing
1318 requirements and procedures with respect thereto; requiring
1319 public notice of department recommendation and petition for
1320 certification hearings; providing for land use and certification
1321 hearings; providing requirements and procedures with respect
1322 thereto; authorizing the board to have final disposition on
1323 certification applications; providing that this act supersedes
1324 certain laws and regulations; providing for effect of
1325 certification; requiring certain public notice; providing
1326 responsibility for certain costs; providing for revocation or
1327 suspension of certification; providing for appeal and review of
1328 proceedings under the act; providing for compliance enforcement;
1329 requiring the department to make information available to the
1330 public; providing requirements and procedures for modification
1331 of certification; providing for supplemental applications for
1332 sites certified for ultimate site capacity; requiring certain
1333 fees; providing for deposit into the Florida Permit Fee Trust
1334 Fund and for subsequent distribution; requiring the Public
1335 Service Commission to hold hearings on determination of need;
1336 providing requirements and procedures with respect thereto;
1337 creating ch. 366.93, F.S.; providing definitions; requiring the
1338 Public Service Commission to implement rules related to nuclear
1339 power plant cost recovery; requiring a report; providing an
1340 effective date.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

WHEREAS, the extraordinary and unprecedented global increases in the cost of fuel oil and natural gas, coupled with the state's rapidly growing population and increasing demands for electric energy, have brought into sharp focus the need to enhance fuel diversity, and

WHEREAS, the world growth in demand for fuel oil and natural gas may continue to have further impact on the cost and supply of these resources, and

WHEREAS, the impact of Hurricane Katrina on supplies of natural gas and fuel oil further substantiates the need to alter the balance of fuel diversity in connection with the generation of electricity in the state, and

WHEREAS, the federal Energy Policy Act of 2005 encourages the siting and operation of new nuclear generation by providing tax and other incentives to reduce the costs of such plants, and

WHEREAS, significant federally funded benefits and incentives available under the federal Energy Policy Act of 2005 are available to only the first 6,000 megawatts of new advanced nuclear reactor generating capacity licensed in the United States, and

WHEREAS, operation of new nuclear power generation within the state, particularly if such generation is eligible for the tax and other incentives available under the federal Energy Policy Act of 2005, will benefit the state's electric customers, and

WHEREAS, existing provisions of the Florida Electrical Power Plant Siting Act are inadequate to address the unique issues of siting nuclear power generation within the state and securing benefits under the federal Energy Policy Act of 2005, NOW, THEREFORE,

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

1372

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1199 **Statewide Cable Television Franchises**
SPONSOR(S): Traviesa and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Utilities & Telecommunications Committee</u>	_____	Cater <i>gac</i>	Holt <i>ugh</i>
2) <u>Finance & Tax Committee</u>	_____	_____	_____
3) <u>Commerce Council</u>	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

HB1199 establishes the Department of State with the authority to issue state-wide cable franchises and designates it as the state franchising authority. The bill preempts municipality or county authority to negotiate cable service franchises.

The bill creates ss. 61.102 through 610.116 to create the new franchising authority. Specifically, the bill:

- Provides definitions.
- Provides for the application for a statewide authorization to provide cable services, including provisions as to under what circumstances a cable operator with an existing franchise with a municipality or county may receive a state-issued franchise for its current franchise area.
- Prohibits franchise fees; however, it should be noted that franchise fees are currently being collected through the Communications Services Tax.
- Prohibits buildout requirement.
- Provides that an incumbent cable provider must abide by customer service standards reasonably comparable to those in the Federal Communications Commission (FCC) rules until there are two or more cable service providers in the relevant area.
- Provides guidelines for the number of public, educational, and government (PEG) channels to be provided in a certain area, including when a channel is considered substantially used.
- Prohibits municipalities or counties from discriminating against certificates for items such as access to rights-of-ways, buildings or property, terms of utility pole attachments, filing certain documents with the municipality or county.
- Prohibits discrimination against subscribers based on income.
- Provides that complaints regarding cable service are to be accepted by the Department of Agriculture and Consumer Services (DACS).

The bill also amends statutes related to the Communications Services Tax and the use of rights-of-way to conform to this act.

The Revenue Estimating Conference has yet to meet on this bill to determine a fiscal impact.

This act shall take effect July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government- The bill preempts a municipality or county's authority to issue cable franchises, and gives this authority to the state, specifically the Department of State. The Department of Agriculture and Consumer Services receives the authority to receive complaints concerning state issued cable franchises, and complaints that these franchises are discriminating against customers based on their income.

B. EFFECT OF PROPOSED CHANGES:

Background

Federal Law

In 1965, the Federal Communications Commission (FCC or Commission) established rules for cable systems that used microwave antennas to receive signals. The next year, the FCC established rules for all cable systems. In 1968, The United States Supreme Court affirmed the FCC's jurisdiction over cable. In 1972, FCC rules went into effect that required cable television operators to obtain a certificate of compliance from the FCC prior to operating a cable television system or adding a television broadcast signal. Two of the issues these rules addressed were franchise standards and technical standards. Since then many of these rules have been either modified or eliminated.

In 1984, Congress passed the Cable Communications Policy Act of 1984 (1984 Cable Act). This law established policies in such areas as franchise provisions and renewals, subscriber rates and policy, and pole attachments. It also defined jurisdictional boundaries among federal, state, and local governments regulating cable television systems. This law prohibited cable operators from providing service without obtaining a franchise from the local franchise authority (LFA). This law also required the LFA's to assure that cable service is not denied to residential customers based on their income and it is to allow a reasonable period of time for the cable company to be able to provide service to all houses in the franchise area. Additionally, the law provided that the LFA may require assurances from the cable company that it will provide adequate capacity, facilities, or financial support for public, educational, and government access channels.

In 1992, Congress passed the 1992 Cable Act, which provides that a franchising authority may award one or more franchises within its jurisdiction, but it may not award an exclusive franchise or unreasonably refuse to award an additional competitive franchise.

Current Cable Act

The purposes of the federal Cable Act (Cable Act) as found in 47 USC 521 are to:

- (1) Establish a national policy concerning cable communications;
- (2) establish franchise procedures and standards which encourage the growth and development of cable systems and which assure that cable systems are responsive to the needs and interests of the local community;
- (3) establish guidelines for the exercise of Federal, State, and local authority with respect to the regulation of cable systems;
- (4) Assure that cable communications provide and are encouraged to provide the widest possible diversity of information sources and services to the public;
- (5) Establish an orderly process for franchise renewal which protects cable

operators against unfair denials of renewal where the operator's past performance and proposal for future performance meet the standards established by this subchapter; and

(6) Promote competition in cable communications and minimize unnecessary regulation that would impose an undue economic burden on cable systems.

Federal Franchise Requirements

The federal Cable Act, 47 USC s. 541 et. seq., allows a franchising authority to award one or more franchises within its jurisdiction, except that it may not issue an exclusive franchise or unreasonably refuse to award an additional competitive franchise.

The franchise is to be construed to authorize the construction of a cable system over public rights-of-way and through easements; except that in using the easements the cable operator shall ensure:

- The safety, functioning, and appearance of the property and the convenience and safety of others not adversely affected by the installation or construction of cable facilities;
- The cost of installation, construction, operation, or removal of such facilities by the cable operator or subscribers, or both;
- The owner of the property is justly compensated by the cable operator for any damages caused by the installation, construction, and operation of facilities.

In awarding the franchise, the LFA:

- Shall allow the applicant's cable system reasonable time to be able to provide cable service to all households;
- May require adequate assurance that the cable operator will provide adequate public, educational, and governmental access channel capacity, facilities, or financial support.
- May require adequate assurances that the cable operator has the financial, technical, and legal qualifications to provide cable service.

In awarding franchises, the LFA shall assure that access to cable service is not denied to a group of potential subscribers because of the income of the residents of the local area in which the group resides.

Federal law also does not require persons who lawfully provided cable service without a franchise on July 1, 1984, to obtain a franchise, unless the LFA requires them to do so.

Pending Federal Legislation

There are several proposals concerning cable regulation that are currently pending in congress. The following are summaries of some of those proposals.

Broadband Investment and Consumer Choice Act, by S.1504, by Ensign (R-NV)

This bill provides that any provider of video services, including existing cable operators, may provide service without obtaining a State or local video franchise. State or local governments may require a reasonable fee to compensate the local government for the costs of managing the public rights-of-way used by the provider, which may not exceed five percent of gross revenues received from subscribers for the provision of video service

Video Choice Act of 2005- S. 1349, by Rockefeller (D-WV), by Smith (R-OR)

This bill provides that any entity with existing rights-of-way authority (e.g., the Bells and other utilities) may provide video programming without obtaining a cable franchise. Existing cable operators would not be entitled to any relief. A "competitive video services provider" "may" be subject to the payment of local franchise fees.

Digital Age Communications Act -S. 2113, by DeMint (R-TN)

This bill provides that existing cable franchise agreements remain in effect until the earlier of the agreement's expiration or four years after enactment. States and their political subdivisions may not renew, extend or otherwise enforce the terms of existing cable franchise agreement beyond these limits. Until an existing agreement is terminated, a State or political subdivision may require competing video service providers to contribute an equitable portion of costs associated with any fees directly attributable to the agreement and the provision of any public access channels required by such agreement.

Reps. Barton (R-TX), Rush (D-IL), Upton (R-MI), Pickering (R-MS) (no bill number assigned yet)

This bill provides that a "new cable operator" that begins providing cable service in a franchise area after date of enactment may elect to obtain a national franchise in lieu of a local franchise. Existing cable operator can obtain national franchise for franchise areas where a new entrant "is providing" service under a national franchise. Franchise fee same as current law (up to 5 percent of gross revenues, with exact level determined by LFA), plus any additional fee imposed by locality for rights-of-way "management."

Principles of Sens. Burns (R-MT) and Inouye (D-HI)

- Recognize and Reaffirm the Role of States and Localities in the Video Franchising Process.
- Promote Competition by Facilitating Speedy Entry on Fair Terms.
- Promote Competitive Neutrality and a Level Playing Field.

Federal Rulemaking

On November 18, 2005, the FCC released a *Notice of Proposed Rulemaking (Notice)* to initiate a proceeding to further the interrelated goals of enhanced cable competition and accelerated broadband deployment. The FCC tentatively concludes that the mandate of Section 621(a)(1) of the Cable Act (47 USC 547, (a)(1)) should be interpreted to prohibit not just the ultimate refusal to award a franchise, but also a broader range of behaviors, and the *Notice* seeks comment on that conclusion.

The relevant section of the federal Cable Act states:

- (a) Authority to award franchises; public rights-of-way and easements; equal access to service; time for provision of services; assurances

(1) A franchising authority may award, in accordance with the provisions of this subchapter, 1 or more franchises within its jurisdiction; except that a franchising authority may not grant an exclusive franchise and may not unreasonably refuse to award an additional competitive franchise. Any applicant whose application for a second franchise has been denied by a final decision of the franchising authority may appeal such final decision pursuant to the provisions of section 555 of this title [judicial proceedings] for failure to comply with this subsection.

Specifically, the *Notice* addresses a broad range of questions, including:

- If local franchising authorities are unreasonably refusing to grant competitive franchises. The *Notice* also asks what problems cable incumbents have encountered with LFAs, including how best the Commission can ensure that the local franchising process is not inhibiting the ability of incumbent cable operators to invest in broadband services.
- Whether the Commission has authority to implement the pro-competitive mandate of Section 621(a)(1). The *Notice* tentatively concludes that the Commission is empowered by provisions of both Title I and Title VI of the Communications Act to take steps appropriate to ensure that the local franchising process does not serve as an unreasonable barrier to entry for competitive

cable operators. The *Notice* also tentatively concludes that the Commission may deem to be preempted and superseded any law or regulation of a State or LFA that causes an unreasonable refusal to award a competitive franchise in contravention of Section 621(a).

- The *Notice* tentatively concludes that it is not unreasonable for an LFA, in awarding a franchise, to "assure that access to cable service is not denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides"; "allow [a] cable system a reasonable period of time to become capable of providing cable service to all households in the franchise area"; and "require adequate assurance that the cable operator will provide adequate public, educational and governmental access channel capacity, facilities, or financial support."
- Assuming there is both the need and the authority for Commission intervention, the *Notice* asks how the Commission should interpret the mandate of Section 621(a)(1). The item tentatively concludes that the Commission should interpret the relevant language of Section 621(a)(1) broadly in order to prohibit not only unreasonable refusals to award competitive franchises, but also the establishment of procedures and other requirements that unreasonably interfere with the ability of would-be new entrants to introduce quickly their competitive offerings.
- What specific steps should the Commission take to implement Section 621(a)(1).
- The *Notice* seeks comment on whether the Commission has authority to establish a minimum amount of time for potential competitors with existing facilities to build out their networks beyond their current service territories. It also seeks comment on what would constitute a reasonable minimum timeframe.
- Finally, the *Notice* asks whether the Commission should address actions at the state level, to the extent we find such actions create unreasonable barriers to entry for potential competitors.

Comments were filed on February 13, 2006. Reply comments were filed March 28, 2006. It is unknown when the FCC will make its decision.

State Law

In 1987 the Legislature enacted s. 166.046, F.S., providing minimum standards for cable television franchises. Section 166.046(2), F.S. provides:

- 2) No municipality or county shall grant a franchise for cable service to a cable system within its jurisdiction without first, at a duly noticed public hearing, having considered:
 - (a) The economic impact upon private property within the franchise area;
 - (b) The public need for such franchise, if any;
 - (c) The capacity of public rights-of-way to accommodate the cable system;
 - (d) The present and future use of the public rights-of-way to be used by the cable system;
 - (e) The potential disruption to existing users of the public rights-of-way to be used by the cable system and the resultant inconvenience which may occur to the public;
 - (f) The financial ability of the franchise applicant to perform;
 - (g) Other societal interests as are generally considered in cable television franchising;
 - (h) Such other additional matters, both procedural and substantive, as the municipality or county may, in its sole discretion, determine to be relevant.

In addition s. 166.046(3), F.S., provides that a municipality or county cannot grant any overlapping cable franchises on terms or conditions more favorable or less burdensome than existing franchises.

Cable service is taxed pursuant to the Communications Services Tax (CST) contained in ch. 202, F.S. Additionally, cable companies are subject to regulation for the use of rights-of-way under s. 337.401, F.S.

Franchise Agreements

In order to provide cable service in Florida, a cable company is required to obtain a franchise agreement from the LFA, which is either the city or county. The local franchise agreements address issues such as rates, customer service standards, buildout, the number of public, education, and government (PEG) channels, support for PEG channels, use of rights-of-way, and service to government buildings.

Proposed Changes

The bill creates the "Consumer Choice Act of 2006."

Statewide Cable Franchises

The bill creates ss. 610.102 through 610.116, F.S., to provide for statewide franchising authority.

Section 610.102, F.S., designates that the Department of State (DOS) shall be the franchising authority pursuant to 47 U.S.C. s. 522(10)) for a state-issued franchise for the provision of cable service. A municipality or county is prohibited from granting a new franchise for provisioning cable service within its jurisdiction.

Definitions

Section 610.103, F.S., provides the following definitions as used in ss. 610.102-610.115:

Cable service-(a) The one-way transmission to subscribers of video programming or any other programming service; (b) Subscriber interaction, if any, that is required for the selection of such video programming or other programming service.

Cable system-a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service that includes video programming and that is provided to multiple subscribers within a community, but such term does not include: (a) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (b) a facility that serves only subscribers in one or more multiple-unit dwellings under common ownership, control, or management, unless such facility or facilities use any public right-of-way; (c) a facility that serves subscribers without using any public right-of-way (i.e. satellite service); (d) a facility of a common carrier that is subject, in whole or in part, to the provisions of 47 U.S.C. s. 201 et. seq. (federal common carrier regulation), except the specific bandwidths or wavelengths over such facility shall be considered a cable system only to the extent such bandwidths or wavelengths are used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services (i.e. video programming from internet websites), in which case it is not a cable system; or (e) Any facilities of any electric utility used solely for operating its electric utility systems.

With the definition of "cable system" exempting interactive on-demand service, concern has been raised that the definition also creates an exemption from the requirement to obtain a franchise for providers of internet-protocol television (IPTV). However, some providers have argued that IPTV does

not trigger local cable franchise requirements. The IPTV technology is an interactive delivery service as opposed to a traditional cable that provides one-way transmission service.¹

Cable service provider-a person that provides cable service over a cable system.

Certificateholder-a cable service provider that has been issued and holds a certificate of franchise authority from the department.

Department-the Department of State.

Franchise-an initial authorization or renewal of an authorization, regardless of whether the authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, to construct and operate a cable system in the public right-of-way.

Franchise authority-any governmental entity empowered by federal, state, or local law to grant a franchise.

Incumbent cable service provider-the cable service provider serving the largest number of cable subscribers in a particular municipal or county franchise area on July 1, 2006.

Public right-of-way-the area on, below, or above a public roadway, highway, street, sidewalk, alley, or waterway, including, without limitation, a municipal, county, state, district, or other public roadway, highway, street, sidewalk, alley, or waterway.

Video programming-programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

State Authorization to Provide Cable Service

Section 610.104, F.S., outlines the procedures and requirements associated with applying to the DOS for a state-issued certificate, including applicant criteria and information to be included in the application. The bill provides that after July 1, 2006, an entity or person who seeks to provide cable service, over a cable system, shall file with DOS an application for a state-issued certificate of franchise authority as required by the section. An incumbent cable provider operating under an unexpired franchise agreement is not subject to this subsection with respect to that municipality or county until the franchise agreement or ordinance expires, except as provided in subsection (2) and s. 610.105(4). Additionally, as of July 1, 2006, an incumbent may seek a state issued certificate to provide service in an area where it does not have an existing franchise agreement. Concern has been raised that this provision creates an unfair advantage for incumbent providers who are restricted to the terms and conditions of the unexpired franchise agreement.

A cable service provider who is not an incumbent may within 90 days after July 1, 2006,² elect to terminate an existing local franchise and seek a state-issued certificate by providing written notice to the DOS, and the affected municipality, or county not later than 180 days after July 1, 2006. This non-incumbent provider also is required to provide cable service to less than 40% of the total cable services subscribers in a particular franchise area. The franchise is terminated on the date DOS issues the certificate of franchise authority. It is unclear how 40% was established as criteria. Also, no methodology is included for determining the service area percentage or the entity that performs the calculation.

DOS is required to notify the applicant within 10 business days as to whether the application is complete. If DOS denies the application, it must specify the particular reason that it is denying the

¹ AT&T and BellSouth Comments to the FCC in MB Docket No. 05-311. February 13, 2006.

² The actual time frame would be between September 29 and December 28, 2006.

application and allow the applicant to amend the application to cure the deficiency. The applicant shall be permitted to amend the application to cure any deficiency and DOS shall act upon the amended application within five business days.

By the 15th business day after receiving a completed affidavit signed by an officer of general partner of the applicant, DOS shall issue a certificate of franchise authority. The affidavit shall affirm:

- The applicant has filed or will timely file with the FCC, all forms required by the agency in advance of offering cable service.
- The applicant agrees to comply with all applicable federal and state laws and regulation, to the extent that such state laws and rules are not in conflict with or superseded by provisions of this chapter or other applicable state law.
- The applicant agrees to comply with all lawful state laws and regulations regarding the placement and maintenance of communications facilities in public right-of-way that are generally applicable to providers of communications services.
- A description of the service area for which the applicant seeks certificate of franchise authority, which need not be coextensive with municipal, County, or other political boundaries.
- The location of the applicant's principal place of business and the names of the applicant's principal executive office.

If DOS does not act on an application within 15 business days, the application shall be deemed granted. If an application is denied, the applicant may challenge the denial through a petition of mandamus³ in a court of competent jurisdiction. Concern has been raised that no financial viability needs to be demonstrated in order for an entity to obtain a state-issued certificate. However, proponents feel the market will determine company success in a franchise area.

The certificate of franchise authority issued by DOS shall contain:

- A grant of authority to provide cable service over a cable system as requested in the application.
- A grant of authority to construct, maintain, and operate facilities through, upon, over, and under any public right-of-way or waters.
- A statement that the grant of authority is subject to the lawful operation of the cable system to provide cable service to the applicant or successor in interest.

If a certificateholder seeks to include additional service areas in its current certificate, it shall file notice with the DOS to reflect the new service area or areas.

Federal law allows franchises to require the franchise authority to approve the sale or transfer of a cable system, and gives the franchise authority 120 days to act upon the request for approval or the approval is deemed granted. (47 USC 537). The bill provides that the certificate issued by DOS is fully transferable to any successor in interest to the applicant to which the certificate was initially granted. The notice of transfer shall be filed with DOS and the relevant municipality or county within 14 business days following the completion of the transfer.

The certificate of franchise authority issued by DOS may be terminated by the cable service provider by written notice. Concern was raised that the DOS has no grounds to cancel a certificate of franchise authority.

Eligibility for State-Issued Franchises

³ Mandamus is ordering a public agency or government body to perform an act required by law when it has neglected to do so. mandamus. (n.d.) *The People's Law Dictionary*. (2005). Retrieved March 27 2006 from <http://legal-dictionary.thefreedictionary.com/mandamus>

Section 610.105 establishes, in more detail, eligibility for a state-issued franchise. The bill provides in s. 610.105(1), except as otherwise provided, an incumbent cable service provider with an existing, unexpired cable franchise, as of July 1, 2006, is not eligible to seek a state-issued certificate, and under this chapter as to that municipality or county until the franchise expires.

For purposes of this section, a cable service provider is deemed to have or have had a franchise to provide cable service in a specific municipality or county if any affiliate or successor entity of the cable service provider has or had a franchise agreement granted by that specific municipality or county. Also, for purposes of this section, "affiliate or successor entity" refers to an entity receiving, obtaining, or operating under a franchise that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with the cable service provider.

Section 610.105(4), F.S., provides that an incumbent cable service provider may elect to terminate an existing local franchise agreement and seek a state-issued certificate provided another cable service provider is granted a state-issued certificate for a service area that encompasses at least 50 percent of the total households within the service area covered by the incumbent's existing franchise.

Termination of the existing franchise under this subsection is achieved by submitting written notice to the DOS, and to the affected municipality or county within 180 days following the issuance of the state certificate to the non-incumbent.

The existing franchise may be terminated by providing written notice to the DOS and the municipality or county within 180 days of the issuance of the state-issued certificate to the nonincumbent cable service provider. The franchise issued by the municipality or county is terminated as of the date the state-issued certificate to the non-incumbent provider. Concern has been raised regarding this provision being an unconstitutional impairment of contracts.

Franchise Fees

The Federal Cable Act allows LFAs to assess a franchise fee (a tax, fee, or assessment imposed by the franchise authority or other governmental entity on a cable operator or cable subscriber, or both, because of their status). The fee is not to exceed five percent of the cable operator's gross revenues derived from the operation of the cable system to provide cable service.

Section 610.106, F.S., prohibits the DOS, as well as municipalities and counties from imposing any taxes, fees, charges, or other impositions, or extractions on certificate holders in connection with use of public right-of-way as a condition of doing business in a municipality or county, except those permitted by the Communications Service Tax (ch. 202, F.S.) and the use of the right-of-way (s. 373.401(6), F.S.).

While this section prohibits the imposition of any fees on certificateholders, there is no statutory authority for DOS to charge a filing fee for the applications in order to cover its costs associated with the processing.

Buildout

Federal law provides that in awarding a franchise, the LFA is required to allow the applicant's cable system a reasonable amount of time to become capable of providing cable service to all households in the franchise area.

Section 610.107 prohibits any franchising authority, state agency, or political subdivision from imposing any buildout requirements on a state-issued certificate holder.

Buildout is a requirement in a franchise that requires the cable service provider to provide a service to customers in the local franchise area within a reasonable period of time. According to information provided by local governments buildout requirements prevent the cable operators from "cherry picking" markets and

individual customers within a franchise area. Local governments also argue that that buildout requirements let local governments discourage disparage levels of service in their franchise area.

Customer Service Requirements

Federal rules in 47 C.F.R. s. 76.309(c), provide the following minimum cable service standards which the LFA may enforce with 90 days written notice to the cable provider:

(c) Effective July 1, 1993, a cable operator shall be subject to the following customer service standards:

(1) Cable system office hours and telephone availability--

- (i) The cable operator will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week.
 - (A) Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.
 - (B) After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.
- (ii) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis.
- (iii) The operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.
- (iv) Under normal operating conditions, the customer will receive a busy signal less than three (3) percent of the time.
- (v) Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

(2) Installations, outages and service calls. Under normal operating conditions, each of the following four standards will be met no less than ninety five (95) percent of the time measured on a quarterly basis:

- (i) Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to 125 feet from the existing distribution system.
- (ii) Excluding conditions beyond the control of the operator, the cable operator will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem.
- (iii) The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)
- (iv) An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.
- (v) If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

(3) Communications between cable operators and cable subscribers--

- (i) Refunds--Refund checks will be issued promptly, but no later than either--

- (A) The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or
 - (B) The return of the equipment supplied by the cable operator if service is terminated.
- (ii) Credits--Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

Currently, many cable franchise agreements and cable television ordinances have customers service provisions contained in them. In addition to the above requirements, there may be provisions concerning notice prior to construction, and requiring employees in the field carry photo identification indicating that they are employees of the cable company.

Section 610.608, F.S., requires an incumbent cable service provider to comply with customer service standards reasonably comparable to the federal standards, until there are two or more providers in the relevant service area, excluding direct-to-home satellite service. Thereafter, the Department of Agriculture and Consumer Services (DACS) will receive service quality complaints from customers of certificate holders. The term "reasonably comparable" is not defined by the bill. Concerns have been raised regarding this provision: 1) the DACS role in resolving service quality complaints and its lack of expertise; 2) the DACS lack of specific requirement or enforcement provisions; and 3) there is no enforcement mechanism concerning these standards once two or more providers are providing service in a given area, and do the standards go away.

Local governments have also collected monies from cable operators as a result of violating the customer service provisions of a franchise.

Public, Educational, and Government Access Channels

Since the 1984 Cable Act, LFAs may require cable operators to set aside channels for public, educational, and governmental (PEG) use. In addition, LFAs may require cable operators to provide services, facilities, and equipment for the use of these channels. In general, cable operators are not permitted to control the content of programming PEG channels, but they may impose non-content-based requirements, such as minimum production standards, and they may mandate equipment user training.

PEG channel capacity which is not used for its designated purpose may, with the LFA's permission, be used by the cable operator to provide other services. Under certain conditions, a franchising authority may authorize the use of unused PEG channels to carry low power commercial television stations and local non commercial educational television stations that are required by law.

In s. 610.109, F.S., the bill provides detailed requirements for a certificateholder to provide PEG channels or equivalent capacity to municipalities and counties. This section also requires active use by the municipality or county of the PEG channels with a variety of programming or the PEG channels will revert to the certificate holder. Additionally, this section requires interconnection, where technically feasible, between the certificate holder and the incumbent's cable systems for the purpose of providing PEG programming, so long as the programming does not bear the logo or name of the other cable service provider.

Specifically, if a municipality or county within whose jurisdiction a certificateholder is providing cable service requests, a certificateholder is required to designate a sufficient amount of capacity to allow the provision of PEG channels for non commercial programming as set forth in the bill. The certificateholder has 180 days to do so.

If PEG channels were provided by the incumbent cable provider, the certificate holder must provide the same number of PEG channels supplied by the incumbent, until the expiration of the incumbent's existing franchise agreement or ordinance. For purposes of this section, a public, educational, or

governmental channel is deemed activated if the channel is being used of public, educational, or governmental programming within the municipality for at least 10 hours a day.

If the municipality or county did not have any PEG channels, the certificateholder must provide i) up to three PEG channels for a municipality or county with a population of at least 50,000, or ii) up to two PEG channels for a municipality county with a population of less than 50,000.

If a municipality or county has not used the number of access channels or capacity equivalent as permitted above, access to additional channels or capacity equivalent allowed above shall be provided upon 180 day's written notice, if the municipality or county meets the following standards:

- If the municipality or county has one active PEG channel and wished to activate one additional PEG channel, the initial channel is considered substantially used when it is programmed for 12 hours each calendar day. At least 40 percent of the twelve hours of programming for each business day on average must be nonrepeat programming, which is the first three videocastings of a program.
- If the municipality or county is entitled to three PEG channels and has in service two active PEG channels, each of the two active channels shall be considered substantially used when 12 hours are programmed on each channel each calendar day and at least 50 percent of the 12 hours for each business day for each calendar quarter is nonrepeat programming for three consecutive quarter

The operation of any PEG channel or capacity equivalent is the responsibility of the municipality or county receiving the benefit of such channel or capacity equivalent, and a certificateholder is only responsible for the transmission of the channel's content. The certificateholder is responsible for providing the connectivity to each public, educational, or governmental access channel distribution point up to the first 200 feet.

Municipalities and counties are responsible for ensuring that all transmissions, content, or programming transmitted over a channel or facility by a certificateholder are provided or submitted to the cable service provider in a way that is capable of being accepted and transmitted by a provider without any requirement for additional alteration or change in content by the provider, over the particular network or the provider, which is compatible to the protocol utilized by the cable service provider to deliver services. The provision of PEG content to the provider authorizes the provider to carry such content, including, at the provider option, the authority to carry contents beyond the jurisdictional boundaries of the municipality or county.

Where it is technically feasible, the certificateholder and incumbent cable service provider are to use reasonable efforts to interconnect their cable systems, to provide PEG programming. This interconnection may be accomplished through any reasonable means of interconnecting. The certificateholders and incumbent cable service providers are to negotiate in good faith and incumbent cable service providers may not withhold PEG channels.

A certificateholder is not required to interconnect, or otherwise transmit, PEG content that is branded with the identifying mark of another cable service provider, and the municipality or county may require a cable service provider to remove identifying marks from PEG content made available to another provider.

A court of competent jurisdiction has the exclusive jurisdiction to enforce any requirement under this section.

Nondiscrimination by Municipality or County

The bill creates s. 610.110, F.S., which requires a municipality or county to allow a certificate holder, to install, construct, and maintain a network within a public right-of-way and provide the certificateholder

with open, comparable, nondiscriminatory, and competitively neutral access to the public right-of-way in accordance with the state law regulating the use of the right-of-way by utilities.⁴ The use of a right-of-way by a certificateholder is nonexclusive.

The municipality or county also may not discriminate against a certificateholder regarding the authorization or placement of a network in a public right-of-way, access to buildings or other property, or the terms of utility pole attachments.

Limitations on Local Authority

Section 610.112, F.S., prohibits a municipality or county from imposing additional requirements, except those expressly permitted by this chapter, on certificateholders, including financial, operational, and administrative requirements. A municipality or county may not impose on a certificateholder requirements on:

- Having business offices located in the municipality or county;
- Filing reports and documents with the municipality or county that are not required by state or federal law and are not related to the use of the public right-of-way;
- The inspection of a certificateholder's business records;
- The approval of a transfer of ownership or control, but the municipality or county may require a notice of transfer within a reasonable of time.

The municipality or county may require a permit for a certificateholder to place and maintain facilities in or on a public right-of-way. The permit may require the permitholder, at its own expense, be responsible for any damage resulting from the issuance of a permit and restoring the public right-of-way to a substantially similar condition to how it was before the installation of such facilities. The terms of the permit shall be consistent with construction permits issued to other providers of communications services placing or maintaining facilities in a public right-of-way.

Discrimination Prohibited

Pursuant to federal law, s. 610.113, F.S., prohibits a certificateholder from denying access to service (redlining) to potential residential subscriber because of the income of the residents in the local area where such group resides. Enforcement may be sought by initiating a proceeding with DACS, pursuant to its powers of processing complaints in s. 570.544, F.S. Section 577.544(3), F.S., reads in part:

[T]he Division of Consumer Services shall serve as a clearinghouse for matters relating to consumer protection, consumer information, and consumer services generally. It shall receive complaints and grievances from consumers and promptly transmit them to that agency most directly concerned in order that the complaint or grievance may be expeditiously handled in the best interests of the complaining consumer. If no agency exists, the Division of Consumer Services shall seek a settlement of the complaint using formal or informal methods of mediation and conciliation and may seek any other resolution of the matter in accordance with its jurisdiction.

In determining whether or not a certificateholder has violated the above provision, cost, distance, and technological or commercial limitations shall be taken into account, and the certificate holder shall have a reasonable time to deploy service pursuant to federal law. It may not be considered a violation to use an alternative technology that provides comparable content, service, and functionality. The inability to access a building is also not considered a violation. The section is not to be construed to authorize any buildout requirements.

⁴ S. 337.401, F.S.

While the bill prohibits discrimination based on income (redlining), the bill does not prohibit a certificateholder from refusing to serve a certain area due to other factors such as it being uneconomical to serve a specific area (cherry picking).

Compliance

Section 610.114, F.S., provides that if a court finds a certificateholder to be in noncompliance with any requirements of ch. 610, F.S., the certificateholder shall have a reasonable time, as specified by the court, to cure such non-compliance.

Applicability of Other Laws

Section 610.115, F.S., provides that a provider of video programming that is not a cable service provider does not have its rights impaired by ch. 610, F.S.

Severability

Section 610.116, F.S., provides that if any provision of ch. 610, F.S., or its application to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of ch. 610, F.S., that can be given effect without the invalid provision or application, and the provisions of ch. 610, F.S., are severable.

Communications Services Tax

The bill amends the Communications Services Tax provisions in s. 202.24 (a) and (c), F.S., to conform to the legislation's proposed changes to video franchising. Specifically, it prohibits municipalities and counties from negotiating the terms and conditions related to franchise fees or the definition of gross revenues or other definitions or methodologies related to the payment of franchise fees on providers of cable service.

Additionally, a provision relating to in-kind contributions only applies with respect to cable ordinances or franchise agreements that are in effect prior to July 1, 2006.

Use of Right-of-Way

The bill amends s. 377.041(3), F.S., relating to the use of the right-of-way to conform to the new video franchising legislation. Section 377.041(3)(a)2, F.S., which is completely deleted, relates to the awarding of cable franchises by municipalities and counties. This deleted section provides that municipalities or counties may award one or more cable franchises and cable service providers shall not provide cable service without a franchise. Municipalities and counties retain the authority to negotiate the terms and conditions of cable franchises as provided by federal and state law, except those relating to franchise fees and gross revenues. The municipality or county may require cable providers to provide in-kind services such as institutional networks, support for PEG channels, to the extent permitted by federal law. Also, to the extent permitted by federal law, the cable provider may recover its expenses associated with in-kind requirements.

Section 337.4061, F.S., is amended to conform definitions to what is contained in the new video franchising law. Other conforming changes are made to this section.

Repeal of Current Law

The bill repeals s. 166.046, F.S., which is the current cable service franchise law that provided minimum standards for cable television franchises imposed upon municipalities and counties.

Conforming Statutes

Sections 358.81(3)(a) and 364.0361, F.S., are amended to conform to other statute changes.

Effective Date

This act shall take effect July, 1, 2006.

C. SECTION DIRECTORY:

- Section 1 Provides a short title.
- Section 2 Amends s. 202.24(a) and (c), F.S., relating to limitations of local taxes and fees imposed on dealers of communications services.
- Section 3 Amends s. 366.401(3)(a), (e), and (f), F.S, relating to use of right-of-way for utilities subject to regulation; permit; fees.
- Section 4 Amends s. 337.4061, F.S., relating to definitions; unlawful use of state-maintained road right-of-way by nonfranchised cable services.
- Section 5 Creating ss. 610.102, 610.103, 610.104, 610.105, 610.106, 610.107, 610.108, 610.109, 610.110, 610.112, 610.113, 610.114, 610.115, and 610.116, F.S., creating a statewide cable franchise authority.
- Section 6 Repeals s. 166.046, F.S., relating to cable television franchises.
- Section 7 This act shall take effect on July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. The bill does not give DOS the authority to charge an application fee.

2. Expenditures:

According to the DOS, its estimated first year operating cost would be \$850,116, with \$83,888 of that being non-recurring costs. This estimate is based on establishing a new filing section within the Division of Corporations with 16 full time equivalent positions. These figures are if the DOS's function is ministerial in nature. DOS may incur additional expenditures if it is required to litigate the denial of any certificate or establish rules to implement this law.

More specific information has been requested from DACS. However, according to DACS, the section that tries to informally resolve complaints against unregulated entities currently have five full time equivalent positions, to resolve the approximately 25,000 complaints its receives annually. Therefore, it will need one full time equivalent position for approximately every 5,000 complaints it will receive.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

According to local governments they could potentially lose tens of millions of dollars in capital grants, facilities, and services that cable operators currently provide under franchise agreements. Federal law allows local governments to negotiate numerous benefits from cable operators, including PEG channels provided at no charge, free installation and service to government buildings, free or advantageously priced institutional networks and capital grants. While these benefits are permitted by federal law, the bill would eliminate them. While the bill would eliminate a local government's right to negotiate for these services, it does not eliminate the need for these services, and the local government will need to find the funds to pay for these services.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Instead of obtaining a cable franchise from each municipality or county where it wishes to provide service, an entity wishing to provide cable service will only need to obtain a statewide franchise, under the provisions of the bill, for the area in which it wishes to serve. This could potentially save the thousands of dollars per franchise.

D. FISCAL COMMENTS:

The Revenue Estimating Conference has yet to meet on this bill to determine a fiscal impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

Impairment of Contracts

The bill allows cable operators to unilaterally terminate their franchise agreements with municipalities and counties if certain conditions are met. These provisions may be an unconstitutional impairment of contracts under the United States and Florida constitutions. Staff was provided much of the following legal information from proponents and opponents of the bill.

Local Government Authority to Establish Franchises

Among the things to consider in determining whether or not provisions in the bill constitute an unconstitutional impairment of contracts is from where do municipalities and counties receive their authority to issue cable franchises.

An argument was made that since the state gave the local governments the authority to grant cable franchises, the state can take this authority away. The statutory definition of "franchising authority" is "any governmental entity empowered by federal, state, or local law to grant a franchise." See ss. 166.046 and 337.4061, F.S. While s. 166.046(2), F.S., requires a public hearing and certain things to be considered prior to municipalities and counties granting a cable television franchise, there is nothing in the statute that declares the municipalities and counties as the LFAs.

Moreover, the argument was made that municipalities and counties receive their franchising authority from federal law. Federal law generally prohibits cable operators from providing cable service

without a franchise. 47 USCA 541(b)(1).⁵ However, nothing in federal or state law specifically declares that municipalities and counties are the franchising authority for the provision of cable service. Since neither the federal nor state governments have assumed the role of issuing d cable franchises; it has fallen on the municipalities and counties to become the LFAs.

Local Government Standing to Challenge State Statute

Another question is whether or not the municipalities and counties would have standing to challenge the constitutionality of a state statute.

It appears to be well established that subordinates of a state do not have standing to challenge a state's action under the federal contacts clauses contained in Article I, Section 10 of the United States Constitution. See *Williams v. Mayor of Baltimore*, 289 U.S. 36, 40 (1933), and *American Association of People with Disabilities v. Shelley*, 324 F. Supp. 2d 1120, 1131 (C.D. Cal. 2004).

It appears that the Florida Supreme Court has never addressed the issue of whether or not a city or county can challenge the constitutionality of a state statute.⁶ Lower state courts have ruled that "[s]tate officers and agencies must presume legislation affecting their duties to be valid and *do not have standing to initiate litigation for the purpose of determining otherwise*. *Florida Department of Agriculture and Consumer Services v. Miami-Dade County*, 790 So.2d 555, 558 (Fla. 3d DCA 2001), quoting *Department of Education v. Lewis*, 416 So.2d 455, 458 (Fla. 1982). However, a state agency or officer may defensively raise the constitutionality of a statute if litigation is brought against it. *Department of Education v. Lewis*, 416 So.2d 455, 458 (Fla. 1982). There also appears to be an exception if the law being challenged involves the disbursement of public funds. *Fuchs v. Robbins*, 818 So.2d 460, 464 (Fla. 2002).

Contract Impairment

Instead of challenging the constitutionality of the statute, a municipality or county is more likely to sue a franchisee who terminates its franchise under the provisions of this statute for breach of contract. While the franchisee would argue that this new statute allows it to terminate its franchise agreement with the municipality or county. The municipality or county would argue that the statute is an unconstitutional impairment of contracts.

It is well established in Florida law that "[v]irtually no degree of contract impairment has been tolerated in this state." *Yamaha Parts Distributors, Inc. v. Ehrman*, 316 So. 2d. 557, 559 (Fla. 1975). In determining how much impairment it is willing to tolerate, the Florida Supreme Court has stated:

[W]e must weigh the degree to which a party's contract rights are statutorily impaired against both the source of authority under which the state purports to alter the contractual relationship and the evil which it seeks to remedy. Obviously, this becomes a balancing process to determine whether the nature and extent of the impairment is constitutionally tolerable in light of the importance of the state's objective, or whether it unreasonably intrudes into the parties' bargain to a degree that is necessary to achieve that objective. *Pomponio v. Claridge of Pompano Condominium, Inc.* 378 So.2d 774, 780 (Fla. 1979).

While the cases above, were based on contracts between private parties, there is some case law concerning the Legislature's authority to impair the state's own contracts. The Florida Supreme

⁵ There is an exception for persons lawfully providing cable service without a franchise prior to July 1, 1984, unless required to do so by the franchising authority.

⁶ The question of whether or not a county would have standing to challenge the constitutionality of a state statute was certified to the Florida Supreme Court in 1995, the case was resolved on another issue and the court did not address the certified question. *Santa Rosa County v. Administration Commission, Division of Administrative Hearings*, 661 So.2d 1190 (Fla. 1995).

Court has ruled that once the Legislature accepted and funded a collective bargaining agreement, "the state and all its organs are bound by that agreement under the principles of contract law." *Chiles v. United Faculty of Florida*, 615 So.2d 671, 673 (Fla. 1993). In this case, after ratifying the collective bargaining agreement, in response to a fiscal emergency, the Legislature postponed, then terminated a scheduled pay-raise. The Supreme Court determined that while the legislature has the authority to reduce an appropriation related to a collective bargaining agreement, only when it demonstrates a compelling state interest. However, before exercising this authority:

[T]he legislature must demonstrate that no other reasonable alternative means of preserving its contract with public workers, either in whole or in part. The mere fact that it is politically more expedient to eliminate all or part of the contracted funds is not in itself a compelling reason. Rather, the legislature must demonstrate that funds are from no other possible reasonable source. *Chiles at 673*.

In the *Chiles* case, the state interest that the Legislature was trying to remedy a \$700 million budget shortfall, the Supreme Court determined that the budget shortfall was not sufficient reason for the state to impair the collective bargaining agreement.

If the courts have ruled that both a compelling state interest and no other remedy are required elements before the Legislature can impair the state's contracts.

Home Rule

Article VIII of the Florida Constitution gives municipalities and counties broad "home rule" power, which gives them the authority to enact an ordinance for any public purpose; however, state law prevails when there is a conflict between state law and local law.

Under home rule powers, municipalities and counties have established cable ordinances. These ordinances address the specific needs of the community including demographics, buildout, specific needs for PEG channels, safety and customer services issues.

With the proposed legislation, the bill would remove a municipality or county's authority over cable service, including ordinances and cable franchise provisions that address the specific needs of the community.

B. RULE-MAKING AUTHORITY:

It is unclear whether DOS will need to adopt rules to implement the statewide cable franchise authority. According to DOS, if it is required to adopt rules, and that process takes between 12 to 18 months. This timeframe does factor in legal challenges to the rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Comments

It is unclear whether DOS will need enforcement authority, such as the ability to revoke certificates.

DOS has raised concern that a 15 business day turnaround on approving applications may be difficult to accomplish.

DOS has also raised the concern about whether or not it will be able to implement to provisions of this bill by July 1, 2006, especially if it is required to apply the federal cable regulations (47 USC 541 et, seq.).

Concern was raised about perpetual noncompliance. Section 610.114, F.S., provides that once a court determines that a certificateholder is not in compliance with the chapter's requirements, the certificateholder has a reasonable period of time to cure the noncompliance. However, there is no additional enforcement mechanism if the certificateholder continues to be in noncompliance.

The bill does not provide an appropriation to DOS for the administration of the act. There is also no appropriation to DACS for additional staffing to handle complaints concerning cable television.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

HB 1199

2006

1 A bill to be entitled

2 An act relating to statewide cable television franchises;

3 providing a short title; amending s. 202.24, F.S.;

4 prohibiting counties and municipalities from negotiating

5 terms and conditions relating to cable services; deleting

6 authorization to negotiate; revising application to

7 existing ordinances or franchise agreements; amending s.

8 337.401, F.S.; deleting authorization for counties and

9 municipalities to award cable service franchises and a

10 restriction that cable service companies not operate

11 without such a franchise; amending s. 337.4061, F.S.;

12 revising definitions; creating ss. 610.102, 610.103,

13 610.104, 610.105, 610.106, 610.107, 610.108, 610.109,

14 610.110, 610.112, 610.113, 610.114, 610.115, and 610.116,

15 F.S.; designating the Department of State as the

16 authorizing authority; providing definitions; requiring

17 state authorization to provide cable services; providing

18 duties and responsibilities of the Department of State;

19 providing application procedures and requirements;

20 providing for issuing certificates of franchise authority;

21 providing eligibility requirements and criteria for a

22 certificate; prohibiting the department from imposing

23 taxes, fees, or charges on a cable service provider to

24 issue a certificate; prohibiting imposing buildout

25 requirements on a certificateholder; imposing certain

26 customer service requirements on cable service providers;

27 requiring the Department of Agriculture and Consumer

28 Services to receive customer service complaints; requiring

29 provision of public, educational, and governmental access
30 channels or capacity equivalent; providing criteria,
31 requirements, and procedures; providing exceptions;
32 providing responsibilities of municipalities and counties
33 relating to such channels; providing for enforcement;
34 providing requirements for and limitations on counties and
35 municipalities relating to access to public right-of-way;
36 prohibiting counties and municipalities from imposing
37 additional requirements on certificateholders; authorizing
38 counties and municipalities to require permits of
39 certificateholders relating to public right-of-way;
40 providing permit criteria and requirements; prohibiting
41 discrimination between cable service subscribers;
42 providing for enforcement; providing for determinations of
43 violations; providing for enforcement of compliance by
44 certificateholders; providing for applicability of other
45 laws; providing severability; repealing s. 166.046, F.S.,
46 relating to definitions and minimum standards for cable
47 television franchises imposed upon counties and
48 municipalities; amending ss. 350.81 and 364.0361, F.S.;
49 removing cross-references to conform; providing an
50 effective date.

51
52 Be It Enacted by the Legislature of the State of Florida:

53
54 Section 1. This act may be cited as the "Consumer Choice
55 Act of 2006."

HB 1199

2006

Section 2. Paragraphs (a) and (c) of subsection (2) of section 202.24, Florida Statutes, are amended to read:

202.24 Limitations on local taxes and fees imposed on dealers of communications services.--

(2)(a) Except as provided in paragraph (c), each public body is prohibited from:

1. Levying on or collecting from dealers or purchasers of communications services any tax, charge, fee, or other imposition on or with respect to the provision or purchase of communications services.

2. Requiring any dealer of communications services to enter into or extend the term of a franchise or other agreement that requires the payment of a tax, charge, fee, or other imposition.

3. Adopting or enforcing any provision of any ordinance or agreement to the extent that such provision obligates a dealer of communications services to charge, collect, or pay to the public body a tax, charge, fee, or other imposition.

Municipalities and counties may not negotiate ~~Each municipality and county retains authority to negotiate all terms and conditions of a cable service franchise allowed by federal and state law except these terms and conditions related to franchise fees or and the definition of gross revenues or other definitions or methodologies related to the payment or assessment of franchise fees on providers of cable services.~~

(c) This subsection does not apply to:

HB 1199

2006

1. Local communications services taxes levied under this chapter.

2. Ad valorem taxes levied pursuant to chapter 200.

3. Occupational license taxes levied under chapter 205.

4. "911" service charges levied under chapter 365.

5. Amounts charged for the rental or other use of property owned by a public body which is not in the public rights-of-way to a dealer of communications services for any purpose, including, but not limited to, the placement or attachment of equipment used in the provision of communications services.

6. Permit fees of general applicability which are not related to placing or maintaining facilities in or on public roads or rights-of-way.

7. Permit fees related to placing or maintaining facilities in or on public roads or rights-of-way pursuant to s. 337.401.

8. Any in-kind requirements, institutional networks, or contributions for, or in support of, the use or construction of public, educational, or governmental access facilities allowed under federal law and imposed on providers of cable service pursuant to any existing ordinance or an existing franchise agreement granted by each municipality or county, under which ordinance or franchise agreement service is provided prior to July 1, 2006. Nothing in this subparagraph shall prohibit the ability of providers of cable service to recover such expenses as allowed under federal law.

9. Special assessments and impact fees.

HB 1199

2006

110 10. Pole attachment fees that are charged by a local
111 government for attachments to utility poles owned by the local
112 government.

113 11. Utility service fees or other similar user fees for
114 utility services.

115 12. Any other generally applicable tax, fee, charge, or
116 imposition authorized by general law on July 1, 2000, which is
117 not specifically prohibited by this subsection or included as a
118 replaced revenue source in s. 202.20.

119 Section 3. Paragraphs (a), (e), and (f) of subsection (3)
120 of section 337.401, Florida Statutes, are amended to read:

121 337.401 Use of right-of-way for utilities subject to
122 regulation; permit; fees.--

123 (3)(a)~~1~~. Because of the unique circumstances applicable to
124 providers of communications services, including, but not limited
125 to, the circumstances described in paragraph (e) and the fact
126 that federal and state law require the nondiscriminatory
127 treatment of providers of telecommunications services, and
128 because of the desire to promote competition among providers of
129 communications services, it is the intent of the Legislature
130 that municipalities and counties treat providers of
131 communications services in a nondiscriminatory and competitively
132 neutral manner when imposing rules or regulations governing the
133 placement or maintenance of communications facilities in the
134 public roads or rights-of-way. Rules or regulations imposed by a
135 municipality or county relating to providers of communications
136 services placing or maintaining communications facilities in its
137 roads or rights-of-way must be generally applicable to all

HB 1199

2006

138 providers of communications services and, notwithstanding any
139 other law, may not require a provider of communications
140 services, ~~except as otherwise provided in subparagraph 2.,~~ to
141 apply for or enter into an individual license, franchise, or
142 other agreement with the municipality or county as a condition
143 of placing or maintaining communications facilities in its roads
144 or rights-of-way. In addition to other reasonable rules or
145 regulations that a municipality or county may adopt relating to
146 the placement or maintenance of communications facilities in its
147 roads or rights-of-way under this subsection, a municipality or
148 county may require a provider of communications services that
149 places or seeks to place facilities in its roads or rights-of-
150 way to register with the municipality or county and to provide
151 the name of the registrant; the name, address, and telephone
152 number of a contact person for the registrant; the number of the
153 registrant's current certificate of authorization issued by the
154 Florida Public Service Commission, or the Federal Communications
155 Commission, or the Florida Department of State; and proof of
156 insurance or self-insuring status adequate to defend and cover
157 claims.

158 ~~2. Notwithstanding the provisions of subparagraph 1., a~~
159 ~~municipality or county may, as provided by 47 U.S.C. s. 541,~~
160 ~~award one or more franchises within its jurisdiction for the~~
161 ~~provision of cable service, and a provider of cable service~~
162 ~~shall not provide cable service without such franchise. Each~~
163 ~~municipality and county retains authority to negotiate all terms~~
164 ~~and conditions of a cable service franchise allowed by federal~~
165 ~~law and s. 166.046, except those terms and conditions related to~~

~~franchise fees and the definition of gross revenues or other definitions or methodologies related to the payment or assessment of franchise fees and permit fees as provided in paragraph (c) on providers of cable services. A municipality or county may exercise its right to require from providers of cable service in-kind requirements, including, but not limited to, institutional networks, and contributions for, or in support of, the use or construction of public, educational, or governmental access facilities to the extent permitted by federal law. A provider of cable service may exercise its right to recover any such expenses associated with such in-kind requirements, to the extent permitted by federal law.~~

(e) The authority of municipalities and counties to require franchise fees from providers of communications services, with respect to the provision of communications services, is specifically preempted by the state, ~~except as otherwise provided in subparagraph (a)2.,~~ because of unique circumstances applicable to providers of communications services when compared to other utilities occupying municipal or county roads or rights-of-way. Providers of communications services may provide similar services in a manner that requires the placement of facilities in municipal or county roads or rights-of-way or in a manner that does not require the placement of facilities in such roads or rights-of-way. Although similar communications services may be provided by different means, the state desires to treat providers of communications services in a nondiscriminatory manner and to have the taxes, franchise fees, and other fees paid by providers of communications services be

HB 1199

2006

194 competitively neutral. Municipalities and counties retain all
195 existing authority, if any, to collect franchise fees from users
196 or occupants of municipal or county roads or rights-of-way other
197 than providers of communications services, and the provisions of
198 this subsection shall have no effect upon this authority. The
199 provisions of this subsection do not restrict the authority, if
200 any, of municipalities or counties or other governmental
201 entities to receive reasonable rental fees based on fair market
202 value for the use of public lands and buildings on property
203 outside the public roads or rights-of-way for the placement of
204 communications antennas and towers.

205 (f) Except as expressly allowed or authorized by general
206 law and except for the rights-of-way permit fees subject to
207 paragraph (c), a municipality or county may not levy on a
208 provider of communications services a tax, fee, or other charge
209 or imposition for operating as a provider of communications
210 services within the jurisdiction of the municipality or county
211 which is in any way related to using its roads or rights-of-way.
212 A municipality or county may not require or solicit in-kind
213 compensation, except as otherwise provided in s. 202.24(2)(c)8.
214 or s. 610.109 ~~subparagraph (a)2.~~ Nothing in this paragraph shall
215 impair any ordinance or agreement in effect on May 22, 1998, or
216 any voluntary agreement entered into subsequent to that date,
217 which provides for or allows in-kind compensation by a
218 telecommunications company.

219 Section 4. Section 337.4061, Florida Statutes, is amended
220 to read:

HB 1199

2006

337.4061 Definitions; unlawful use of state-maintained
road right-of-way by nonfranchised cable ~~television~~ services.--

(1) As used in this section, the term:

(a) "Cable service" means:

1. The one-way transmission to subscribers of video
programming or any other programming service; and

2. Subscriber interaction, if any, which is required for
the selection of such video programming or other programming
service.

(b) "Cable system" means a facility, consisting of a set
of closed transmission paths and associated signal generation,
reception, and control equipment that is designed to provide
cable service which includes video programming and which is
provided to multiple subscribers within a community, but such
term does not include:

1. A facility that serves only to retransmit the
television signals of one or more television broadcast stations;

2. A facility that serves only subscribers in one or more
multiple-unit dwellings under common ownership, control, or
management, unless such facility or facilities use any public
right-of-way;

3. A facility that serves subscribers without using any
public right-of-way;

4.3. A facility of a common carrier that is subject, in
whole or in part, to the provisions of 47 U.S.C. s. 201 et seq.,
except the specific bandwidths or wavelengths used by that such
facility shall be considered a cable system only to the extent
such bandwidths or wavelengths are facility is used in the

HB 1199

2006

249 transmission of video programming directly to subscribers,
250 unless the extent of such use is solely to provide interactive
251 on-demand services, in which case the use of such bandwidths or
252 wavelengths is not a cable system; or

253 5.4- Any facilities of any electric utility used solely
254 for operating its electric utility systems.

255 (c) "Franchise" means an initial authorization or renewal
256 thereof issued by a franchising authority, whether such
257 authorization is designated as a franchise, permit, license,
258 resolution, contract, certificate, agreement, or otherwise,
259 which authorizes the construction or operation of a cable
260 system.

261 (d) "Franchising authority" means any governmental entity
262 empowered by federal, state, or local law to grant a franchise.

263 (e) "Person" means an individual, partnership,
264 association, joint stock company, trust, corporation, or
265 governmental entity.

266 (f) "Video programming" means programming provided by or
267 generally considered comparable to programming provided by a
268 television broadcast station or cable system.

269 (2) It is unlawful to use the right-of-way of any state-
270 maintained road, including appendages thereto, and also
271 including, but not limited to, rest areas, wayside parks, boat-
272 launching ramps, weigh stations, and scenic easements, to
273 provide for cable service over a cable system ~~purposes~~ within a
274 geographic area subject to a valid existing franchise for cable
275 service, unless the cable system using such right-of-way holds a

HB 1199

2006

276 franchise from a franchise authority ~~the municipality or county~~
 277 for the area in which the right-of-way is located.

278 (3) A violation of this section shall be deemed a
 279 violation of s. 337.406.

280 Section 5. Sections 610.102, 610.103, 610.104, 610.105,
 281 610.106, 610.107, 610.108, 610.109, 610.110, 610.112, 610.113,
 282 610.114, 610.115, and 610.116, Florida Statutes, are created to
 283 read:

284 610.102 Department of State authority to issue statewide
 285 cable franchise.--The department shall be designated as the
 286 franchising authority, pursuant to 47 U.S.C. s. 522(10), for a
 287 state-issued franchise for the provision of cable service. A
 288 municipality or county may not grant a new franchise for the
 289 provision of cable service within its jurisdiction.

290 610.103 Definitions.--As used in ss. 610.102-610.115:

291 (1) "Cable service" means:

292 (a) The one-way transmission to subscribers of video
 293 programming or any other programming service.

294 (b) Subscriber interaction, if any, that is required for
 295 the selection of such video programming or other programming
 296 service.

297 (2) "Cable system" means a facility consisting of a set of
 298 closed transmission paths and associated signal generation,
 299 reception, and control equipment that is designed to provide
 300 cable service that includes video programming and that is
 301 provided to multiple subscribers within a community, but such
 302 term does not include:

HB 1199

2006

(a) A facility that serves only to retransmit the television signals of one or more television broadcast stations;

(b) A facility that serves only subscribers in one or more multiple-unit dwellings under common ownership, control, or management, unless such facility or facilities use any public right-of-way;

(c) A facility that serves subscribers without using any public right-of-way;

(d) A facility of a common carrier that is subject, in whole or in part, to the provisions of 47 U.S.C. s. 201 et seq., except the specific bandwidths or wavelengths over such facility shall be considered a cable system only to the extent such bandwidths or wavelengths are used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services, in which case it is not a cable system; or

(e) Any facilities of any electric utility used solely for operating its electric utility systems.

(3) "Cable service provider" means a person that provides cable service over a cable system.

(4) "Certificateholder" means a cable service provider that has been issued and holds a certificate of franchise authority from the department.

(5) "Department" means the Department of State.

(6) "Franchise" means an initial authorization or renewal of an authorization, regardless of whether the authorization is designated as a franchise, permit, license, resolution,

HB 1199

2006

contract, certificate, agreement, or otherwise, to construct and
operate a cable system in the public right-of-way.

(7) "Franchise authority" means any governmental entity
empowered by federal, state, or local law to grant a franchise.

(8) "Incumbent cable service provider" means the cable
service provider serving the largest number of cable subscribers
in a particular municipal or county franchise area on July 1,
2006.

(9) "Public right-of-way" means the area on, below, or
above a public roadway, highway, street, sidewalk, alley, or
waterway, including, without limitation, a municipal, county,
state, district, or other public roadway, highway, street,
sidewalk, alley, or waterway.

(10) "Video programming" means programming provided by, or
generally considered comparable to programming provided by, a
television broadcast station as set forth in 47 U.S.C. s.
522(20).

610.104 State authorization to provide cable service.--

(1) An entity or person seeking to provide cable service
over a cable system in this state after July 1, 2006, shall file
an application for a state-issued certificate of franchise
authority with the department as required by this section. An
entity providing cable service under an unexpired franchise
agreement with a municipality or county as of July 1, 2006, is
not subject to this subsection with respect to such municipality
or county until the franchise agreement expires, except as
provided by subsection (2) and s. 610.105(4). An entity
providing cable service may seek authorization from the

HB 1199

2006

department to provide service in areas where the entity
currently does not have an existing franchise agreement as of
July 1, 2006.

(2) Beginning 90 days after July 1, 2006, a cable service
provider that is not an incumbent cable service provider and
provides cable service to less than 40 percent of the total
cable service subscribers in a particular franchise area may
elect to terminate an existing municipal or county franchise and
seek a state-issued certificate of franchise authority by
providing written notice to the Secretary of State and the
affected municipality or county not later than 180 days after
July 1, 2006. The municipal or county franchise is terminated on
the date the department issues the state-issued certificate of
franchise authority.

(3) Before the 10th business day after an applicant
submits the affidavit, the department shall notify the applicant
for a state-issued certificate of franchise authority whether
the applicant's affidavit described by subsection (4) is
complete. If the department denies the application, the
department must specify with particularity the reasons for the
denial and permit the applicant to amend the application to cure
any deficiency. The department shall act upon such amended
application within 5 business days.

(4) The department shall issue a certificate of franchise
authority to offer cable service before the 15th business day
after receipt of a completed affidavit submitted by an applicant
and signed by an officer or general partner of the applicant
affirming:

386 (a) That the applicant has filed or will timely file with
387 the Federal Communications Commission all forms required by that
388 agency in advance of offering cable service in this state.

389 (b) That the applicant agrees to comply with all
390 applicable federal and state laws and regulations, to the extent
391 that such state laws and rules are not in conflict with or
392 superseded by the provisions of this chapter or other applicable
393 state law.

394 (c) That the applicant agrees to comply with all lawful
395 state laws and rules and municipal and county ordinances and
396 regulations regarding the placement and maintenance of
397 communications facilities in the public right-of-way that are
398 generally applicable to providers of communications services in
399 accordance with s. 337.401.

400 (d) A description of the service area for which the
401 applicant seeks certificate of franchise authority, which need
402 not be coextensive with municipal, county, or other political
403 boundaries.

404 (e) The location of the applicant's principal place of
405 business and the names of the applicant's principal executive
406 officers.

407 (5) If the department fails to act on the application
408 within 15 business days after receiving the application, the
409 application shall be deemed granted by the department without
410 further action.

411 (6) The certificate of franchise authority issued by the
412 department shall contain:

HB 1199

2006

(a) A grant of authority to provide cable service over a cable system as requested in the application.

(b) A grant of authority to construct, maintain, and operate facilities through, upon, over, and under any public right-of-way or waters.

(c) A statement that the grant of authority is subject to lawful operation of the cable system to provide cable service by the applicant or its successor in interest.

(7) A certificateholder that seeks to include additional service areas in its current certificate shall file notice with the department that reflects the new service area or areas to be served.

(8) The certificate of franchise authority issued by the department is fully transferable to any successor in interest to the applicant to which the certificate is initially granted. A notice of transfer shall be filed with the department and the relevant municipality or county within 14 business days following the completion of such transfer.

(9) The certificate of franchise authority issued by the department may be terminated by the cable service provider by submitting notice to the department.

(10) An applicant may challenge a denial of an application by the department in a court of competent jurisdiction through a petition for mandamus.

610.105 Eligibility for state-issued franchise.--

(1) Except as provided in s. 610.104(1) and (2) and subsection (4), a cable service provider that has an existing, unexpired franchise to provide cable service with respect to a

HB 1199

2006

441 municipality or county as of July 1, 2006, is not eligible to
442 seek a state-issued certificate of franchise authority under
443 this chapter as to that municipality or county until the
444 expiration date of the existing franchise agreement.

445 (2) For purposes of this section, a cable service provider
446 will be deemed to have or have had a franchise to provide cable
447 service in a specific municipality or county if any affiliate or
448 successor entity of the cable service provider has or had a
449 franchise agreement granted by that specific municipality or
450 county.

451 (3) The term "affiliate or successor entity" in this
452 section refers to an entity receiving, obtaining, or operating
453 under a franchise that directly or indirectly owns or controls,
454 is owned or controlled by, or is under common ownership or
455 control with the cable service provider.

456 (4) Notwithstanding subsection (1), a cable service
457 provider may elect to terminate an existing municipal or county
458 franchise and seek a state-issued certificate of franchise
459 authority with respect to such municipality or county if another
460 cable service provider is granted a state-issued certificate of
461 franchise authority for a service area that encompasses at least
462 50 percent of the total households within the service area
463 covered by the existing municipal or county franchise. The cable
464 service provider may terminate its existing franchise under this
465 subsection by providing written notice to the Secretary of State
466 and the affected municipality or county within 180 days
467 following the issuance of the state-issued certificate of
468 franchise authority to the nonincumbent cable service provider.

HB 1199

2006

The municipal or county franchise is terminated on the date the department issues the state-issued certificate of franchise authority with respect to such municipality or county to the cable service provider.

610.106 Franchise fee prohibited.--The department may not impose any taxes, fees, charges, or other impositions on a cable service provider as a condition for the issuance of a state-issued certificate of franchise authority. No municipality or county may impose any taxes, fees, charges, or other exactions on certificateholders in connection with use of public right-of-way as a condition of a certificateholder doing business in the municipality or county, or otherwise, except such taxes, fees, charges, or other exactions permitted by chapter 202 and s. 337.401(6).

610.107 Buildout.--No franchising authority, state agency, or political subdivision may impose any buildout requirements on a certificateholder.

610.108 Customer service standards.--An incumbent cable service provider shall comply with customer service requirements reasonably comparable to the standards in 47 C.F.R. s. 76.309(c) until there are two or more providers offering service, excluding direct-to-home satellite service, in the relevant service area. The Department of Agriculture and Consumer Services shall receive service quality complaints from customers of a certificateholder.

610.109 Public, educational, and governmental access channels.--

HB 1199

2006

496 (1) A certificateholder, not later than 180 days following
497 a request by a municipality or county within whose jurisdiction
498 the certificateholder is providing cable service, shall
499 designate a sufficient amount of capacity on its network to
500 allow the provision of public, educational, and governmental
501 access channels for noncommercial programming as set forth in
502 this section.

503 (2) A certificateholder shall designate a sufficient
504 amount of capacity on its network to allow the provision of a
505 comparable number of public, educational, and governmental
506 access channels or capacity equivalent that a municipality or
507 county has activated under the incumbent cable service
508 provider's franchise agreement as of July 1, 2006. For the
509 purposes of this section, a public, educational, or governmental
510 channel is deemed activated if the channel is being used for
511 public, educational, or governmental programming within the
512 municipality for at least 10 hours per day.

513 (3) If a municipality or county did not have public,
514 educational, or governmental access channels activated under the
515 incumbent cable service provider's franchise agreement as of
516 July 1, 2006, not later than 180 days following a request by the
517 municipality or county within whose jurisdiction a
518 certificateholder is providing cable service, the cable service
519 provider shall furnish:

520 (a) Up to three public, educational, or governmental
521 channels or capacity equivalent for a municipality or county
522 with a population of at least 50,000.

(b) Up to two public, educational, or governmental channels or capacity equivalent for a municipality or county with a population of less than 50,000.

(4) Any public, educational, or governmental channel provided pursuant to this section that is not used by the municipality or county for at least 10 hours a day shall no longer be made available to the municipality or county but may be programmed at the cable service provider's discretion. At such time as the municipality or county can certify to the cable service provider a schedule for at least 10 hours of daily programming, the cable service provider shall restore the previously lost channel but shall be under no obligation to carry that channel on a basic or analog tier.

(5) If a municipality or county has not used the number of access channels or capacity equivalent permitted by subsection (3), access to the additional channels or capacity equivalent allowed in subsection (3) shall be provided upon 180 days' written notice if the municipality or county meets the following standard: if a municipality or county has one active public, educational, or governmental channel and wishes to activate an additional public, educational, or governmental channel, the initial channel shall be considered to be substantially used when 12 hours are programmed on that channel each calendar day. In addition, at least 40 percent of the 12 hours of programming for each business day on average over each calendar quarter must be nonrepeat programming. Nonrepeat programming shall include the first three videocastings of a program. If a municipality or county is entitled to three public, educational, or governmental

HB 1199

2006

channels under subsection (3) and has in service two active
public, educational, or governmental channels, each of the two
active channels shall be considered to be substantially used
when 12 hours are programmed on each channel each calendar day
and at least 50 percent of the 12 hours of programming for each
business day on average over each calendar quarter is nonrepeat
programming for three consecutive calendar quarters.

(6) The operation of any public, educational, or
governmental access channel or capacity equivalent provided
under this section shall be the responsibility of the
municipality or county receiving the benefit of such channel or
capacity equivalent, and a certificateholder bears only the
responsibility for the transmission of such channel content. A
certificateholder shall be responsible for providing the
connectivity to each public, educational, or governmental access
channel distribution point up to the first 200 feet.

(7) The municipality or county shall ensure that all
transmissions, content, or programming to be transmitted over a
channel or facility by a certificateholder are provided or
submitted to the cable service provider in a manner or form that
is capable of being accepted and transmitted by a provider
without any requirement for additional alteration or change in
the content by the provider, over the particular network of the
cable service provider, which is compatible with the technology
or protocol utilized by the cable service provider to deliver
services. The provision of public, educational, or governmental
content to the provider constitutes authorization for the
provider to carry such content, including, at the provider's

HB 1199

2006

option, authorization to carry the content beyond the jurisdictional boundaries of the municipality or county.

(8) Where technically feasible, a certificateholder and an incumbent cable service provider shall use reasonable efforts to interconnect their cable systems for the purpose of providing public, educational, and governmental programming.

Interconnection may be accomplished by direct cable, microwave link, satellite, or other reasonable method of connection.

Certificateholders and incumbent cable service providers shall negotiate in good faith and incumbent cable service providers may not withhold interconnection of public, educational, and governmental channels.

(9) A certificateholder is not required to interconnect for, or otherwise to transmit, public, educational, and governmental content that is branded with the logo, name, or other identifying marks of another cable service provider, and a municipality or county may require a cable service provider to remove its logo, name, or other identifying marks from public, educational, and governmental content that is to be made available to another provider.

(10) A court of competent jurisdiction shall have exclusive jurisdiction to enforce any requirement under this section.

610.110 Nondiscrimination by municipality or county.--

(1) A municipality or county shall allow a certificateholder to install, construct, and maintain a network within a public right-of-way and shall provide a certificateholder with open, comparable, nondiscriminatory, and

HB 1199

2006

607 competitively neutral access to the public right-of-way in
 608 accordance with the provisions of s. 337.401. All use of a
 609 public right-of-way by a certificateholder is nonexclusive.

610 (2) A municipality or county may not discriminate against
 611 a certificateholder regarding:

612 (a) The authorization or placement of a network in a
 613 public right-of-way;

614 (b) Access to a building or other property; or

615 (c) Utility pole attachment terms.

616 610.112 Limitation on local authority.--

617 (1) A municipality or county may not impose additional
 618 requirements on a certificateholder, including, but not limited
 619 to, financial, operational, and administrative requirements,
 620 except as expressly permitted by this chapter. A municipality or
 621 county may not impose on activities of a certificateholder a
 622 requirement:

623 (a) That particular business offices be located in the
 624 municipality or county;

625 (b) Regarding the filing of reports and documents with the
 626 municipality or county that are not required by state or federal
 627 law and that are not related to the use of the public right-of-
 628 way. Reports and documents other than schematics indicating the
 629 location of facilities for a specific site that are provided in
 630 the normal course of the municipality's or county's permitting
 631 process, that are authorized by s. 337.401 for communications
 632 services providers, or that are otherwise required in the normal
 633 course of such permitting process shall not be considered
 634 related to the use of the public right-of-way for communications

HB 1199

2006

services providers. A municipality or county may not request
information concerning the capacity or technical configuration
of a certificateholder's facilities;

(c) For the inspection of a certificateholder's business
records; or

(d) For the approval of transfers of ownership or control
of a certificateholder's business, except a municipality or
county may require a certificateholder to provide notice of a
transfer within a reasonable time.

(2) Notwithstanding any other provision of law, a
municipality or county may require the issuance of a permit in
accordance with and subject to s. 337.401 to a certificateholder
that is placing and maintaining facilities in or on a public
right-of-way in the municipality or county. In accordance with
s. 337.402, the permit may require the permitholder to be
responsible, at the permitholder's expense, for any damage
resulting from the issuance of such permit and for restoring the
public right-of-way to a substantially similar condition to that
of the public right-of-way before installation of such
facilities. The terms of the permit shall be consistent with
construction permits issued to other providers of communications
services placing or maintaining communications facilities in a
public right-of-way.

610.113 Discrimination prohibited.--

(1) The purpose of this section is to prevent
discrimination among potential residential subscribers.

(2) Pursuant to 47 U.S.C. s. 541(a)(3), a
certificateholder may not deny access to service to any group of

663 potential residential subscribers because of the income of the
664 residents in the local area in which such group resides.

665 (3) An affected person may seek enforcement of the
666 requirements provided by subsection (2) by initiating a
667 proceeding with the Department of Agriculture and Consumer
668 Services pursuant to s. 570.544.

669 (4) For purposes of determining whether a
670 certificateholder has violated subsection (2), cost, density,
671 distance, and technological or commercial limitations shall be
672 taken into account, and the certificateholder shall have a
673 reasonable time to deploy service pursuant to 47 U.S.C. s.
674 541(a) (4) (A). Use of an alternative technology that provides
675 comparable content, service, and functionality may not be
676 considered a violation of subsection (2). The inability to serve
677 an end user because a certificateholder is prohibited from
678 placing its own facilities in a building or property is not a
679 violation of subsection (2). This section may not be construed
680 to authorize any buildout requirements on a certificateholder.

681 610.114 Compliance.--If a certificateholder is found by a
682 court of competent jurisdiction to not comply with the
683 requirements of this chapter, the certificateholder shall have a
684 reasonable period of time, as specified by the court, to cure
685 such noncompliance.

686 610.115 Applicability of other laws.--Nothing in this
687 chapter impairs the right of a provider of video programming
688 that is not a cable service provider to provide video
689 programming and use public right-of-way under chapter 337
690 without a state-issued certificate of franchise authority.

HB 1199

2006

610.116 Severability.--If any provision of ss. 610.102-610.115 or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of ss. 610.102-610.115 that can be given effect without the invalid provision or application, and to this end the provisions of ss. 610.102-610.115 are severable.

Section 6. Section 166.046, Florida Statutes, is repealed.

Section 7. Paragraph (a) of subsection (3) of section 350.81, Florida Statutes, is amended to read:

350.81 Communications services offered by governmental entities.--

(3)(a) A governmental entity that provides a cable service shall comply with the Cable Communications Policy Act of 1984, 47 U.S.C. ss. 521 et seq., the regulations issued by the Federal Communications Commission under the Cable Communications Policy Act of 1984, 47 U.S.C. ss. 521 et seq., and all applicable state and federal rules and regulations, including, but not limited to, ~~s. 166.046~~ and those provisions of chapters 202, 212, and 337, and 610 which apply to a provider of the services.

Section 8. Section 364.0361, Florida Statutes, is amended to read:

364.0361 Local government authority; nondiscriminatory exercise.--A local government shall treat each telecommunications company in a nondiscriminatory manner when exercising its authority to grant franchises to a telecommunications company or to otherwise establish conditions or compensation for the use of rights-of-way or other public property by a telecommunications company. A local government may

HB 1199

2006

719 not directly or indirectly regulate the terms and conditions,
720 including, but not limited to, the operating systems,
721 qualifications, services, service quality, service territory,
722 and prices, applicable to or in connection with the provision of
723 any voice-over-Internet protocol, regardless of the platform,
724 provider, or protocol, broadband or information service. This
725 section does not relieve a provider from any obligations under
726 ~~s. 166.046~~ or s. 337.401.

727 Section 9. This act shall take effect July 1, 2006.